

**Paternalism and Law: The micro-politics of farm workers' evictions and rural activism in the Western Cape of South Africa**

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***Signed Declaration***

I hereby declare that this thesis has been composed entirely by me, the candidate, Pauline Nolan. Unless otherwise stated or indicated, the work is all my own, and has not been submitted for any other degree or professional qualification.

Signed

Pauline Nolan

## Maps



Map 1 The Western Cape: Stellenbosch, Grabouw and the Overberg region.



Map 2 South Africa

*Acronyms and Abbreviations*

AGRI-SA	South African farmers' union
ANC	African National Congress
BCEA	Basic Conditions of Employment Act
CCMA	Centre for Conciliation, Mediation and Arbitration
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
COSATU	Congress of South African Trade Unions
CRLS	Centre for Rural Legal Studies
DLA	Department of Land Affairs
DoL	Department of Labour
DopStop	Organisation based in Stellenbosch
ESTA (62) of 1997	Extension of Security of Tenure Act (62) of 1997
FAWU	Food and Allied Workers Union
HREP	Human Rights and Education Project (LHR)
LHR	Lawyers for Human Rights
LRA	Labour Relations Act
NCBPA	National Community Based Paralegal Association
NPI	National Paralegal Institute
PLAAS	Programme for Land and Agrarian Studies at the University of the Western Cape, South Africa
PLTP	Paralegal Training Project (LHR)
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
SAPAAWU	South African Plantation, Agricultural and Allied Workers Union
SATRC	South African Truth and Reconciliation Commission
SFP	Security of Farmworkers Project (LHR)
UIF	Unemployment Insurance Fund
WFP	Women on Farms Project



### ***Abstract***

This thesis deals with the micro-politics of farm workers' evictions. It documents farm workers' narratives of the processes of eviction and displacement from farms in the Western Cape of South Africa. It analyses farm relations and their relationship with law, through the eyes of farm workers and through the legal actors who assist them with representation and by lobbying on their behalf. In particular, it focuses on the Extension of Security of Tenure Act (62) of 1997, which was implemented to protect farm workers from the large scale evictions that were taking place on farms and as part of a broader land reform programme.

Drawing particularly on the work of Andries Du Toit, who has written about paternalism on Western Cape Farms (eg. 1998) and more recently on the impact of policy (2002), and on Blair Rutherford's arguments relating to farm workers' organisation in Zimbabwe, I argue that (neo)paternalistic sociality on farms is constantly being renegotiated in spite of and because of new laws, and through involvement of other influences such as locally based paralegals. The core of my argument is that farm workers are 'liminal' in this moment, particularly in the negotiation of eviction and housing tenure, as they operate both within the limits of paternalism where they can, and increasingly through 'access to justice' and related concepts. The boundaries of these discourses and social spaces are constantly shifting back and forth as farm dwellers are influenced by worker organisation as espoused by NGOs, and by increased interaction and understanding with and of laws that protect them; at the same time as they are influenced by their relationships with farm owners and other farm workers, or by paternalism.

The anthropological fieldwork upon which the thesis is based was multi-sited, conducted between February 2002 and September 2003. The thesis follows the work of NGOs and paralegals, and the life histories and recent legal experiences of farm workers. The importance of the interaction between farm workers with law and its interlocutors should not be underestimated even in a context where laws such as ESTA in fact offer limited protection to farm workers' security of tenure. These interactions must be understood in the contexts of continuing but ever renegotiated forms of gendered and racialized paternalism, of a changing economic, legal and political landscape. The thesis is therefore

concerned with these spheres of influences and the micro-dynamics of legal and political contestation in the rural Western Cape.

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head above water during the final stages of writing, and all my other friends in Edinburgh who have helped to do the same at some point along this journey.

## Introduction

The research was conducted at a time of intense activity in South Africa regarding the Extension of Security of Tenure Act (ESTA), and also more general welfare and human rights concerns that land and legal NGOs were raising awareness of at the time. Human Rights day in 2002 was publicly declared as ‘the year of the farm worker’ (radio news broadcast, March 23<sup>rd</sup>). I felt I was in the right place at the right time, as my work at Lawyers for Human Rights (LHR) became a series of meetings, conventions, academic workshops, all to be reported on when I returned to the office, I had a feeling that I was at juncture – an opening out of ambitious rhetorics of universal human rights in the name of equality to the rural areas of South Africa, where farm workers had been considered to be marginalized to any state, political, governmental project. The effect of being on the margins of the state is integral to maintaining farm workers’ previously invisible, and thus comparatively more vulnerable, status. Intense negotiation and activities were introduced to me by NGOs and paralegals; their relations to one another as well as to their stake holders were revealed through these negotiations, discussions, informal conversations, meetings, and interviews.

The Extension of Security of Tenure Act (62) of 1997 (ESTA) had been implemented in order to address the scale of evictions from farms. Over the ten year period since democracy (1994-2004), the Nkusi Development Association and Social Surveys South Africa assessed the number of farm workers evicted and displaced<sup>1</sup> between 1994-2004 to 3 293 389, compared with 2 569 455 between 1984 and 1993 (2005). Therefore nearly 6 million farm workers have been displaced or evicted from farms since 1984, with a rapid increase between 1993 and 1994, the date on which democratic governance began. The statistics also show that the number of evictions increased dramatically in years such as 1997, when ESTA and the Basic Conditions of Employment Act were passed, or in 2003, when the minimum wage came in for farm workers. Kariuki has also estimated that ‘insecure tenure rights afflict around

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<sup>1</sup> Farm workers leaving ‘voluntarily’ leaving rather than being formally evicted. In the report, the distinction between ‘people displaced from farms’ and ‘people evicted from farms’ is unclear.  
[www.pmg.org.za/bills/aug05nkuzi](http://www.pmg.org.za/bills/aug05nkuzi)

13% of South Africa's rural population estimated at 43 million' (Karuiki 2004b: 33), which is fairly concordant with the statistics above<sup>2</sup>.

The rise of evictions from Western Cape fruit and wine farms have manifold roots. Protection of property rights; modernization strategies; apartheid labour protection based on race (this protection was no longer constitutional and former subsidies for farm worker housing were removed) and its subsequent removal from the statutes post-apartheid; and, ironically, the introduction of new laws aimed at protecting tenure rights have all been factors in the rise in the numbers of people displaced or evicted. Labour has been externalized and casualized, and farm worker housing was seen during this period as an unnecessary expense for farmers who were increasingly concerned about their own livelihoods in an increasingly competitive global fruit and wine economy. Part of the constitution aimed to address security of tenure, and the Extension of Security of Tenure Act is a product of this historic document. However, farm dwellers (workers and their families who were formerly protected) are still being evicted at a high rate; many being unaware of the law. If farmers *are* aware of it, they can often evict farm dwellers legally. The ethnography presented in this thesis is the result of multi-sited fieldwork conducted between February 2002 and September 2003, in the Western Cape of South Africa.

### **The Micro-politics of farm workers' evictions**

The main focus of this thesis, the micro-politics of farm workers' evictions, is well documented by various organizations working in the Western Cape. Their work with farmers and farm workers is dedicated to improving living and working conditions on farms, yet due to the convergence of various contemporary and historical political, legal and socio-economic conditions, both on farms (at the micro-level), and in South Africa, farm workers are nowadays being evicted at an unprecedented level, adding to the already high levels of post-apartheid homelessness and inequality. Such organizations struggle to educate farmers and farm workers and lobby the government at a time when the South African government has set a fairly ambitious target for land transfer in agriculture<sup>3</sup>, in its much criticized land reform

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<sup>2</sup> 13% of 43 million is 5 590 000.

<sup>3</sup> 30% of land is to be transferred to non-white hands by 2014 – this target was previously set for 2010 during the period of field research.

programme. This thesis documents farm workers' narratives of the processes of eviction and displacement, at once analyzing farm relations and relations vis-à-vis law and the legal actors who aim to assist them and lobby on their behalf: who represent them. The new forms of social and legal interaction are explored here, but key to the analysis is the legacy of historical relations on farms. The thesis therefore argues that in spite of new laws that aim to address such legacies of slavery and apartheid, in order to concur with the Constitution, in the ten years since the writing of this ambitious document relations have reproduced themselves in new ways but along old lines. The thesis thus describes ethnographically the survival and persistence of paternalism (*neopaternalism*) on farms through new legal dynamics and relations. Moments of eviction and displacement are examined along with narratives of farm dwellers' lives on farms, and their engagement with law and legal processes. The thesis finds that in spite of an active civil society representing farm workers, the traditional system of rule on farms by farmers still holds precisely because the micro-dynamics of new laws meant to protect farm workers, and the failures therein have in fact reproduced the conditions for paternalism to persist. Representatives of farm workers are still forced to negotiate on farmers' terms, even as they themselves attempt to address the persistence of these relations.

Agricultural relations have been seen in South Africa as metonymical for the state of society.<sup>4</sup> If it can be shown that this continues to be the case, then can we thus show that paternalism persists on a much wider scale in South African society? In broader terms, the thesis sets about exploring this question in relation to its historical legal culture, one that is set apart from analyses in other contexts (Merry1990; Yngvesson 1993). The approach taken towards addressing this question is the analysis of literature that describes historical paternalism on farms, alongside personal testimony to this and its changes by farm workers during biographical interviews. These describe the suffering caused by eviction and re-organisation of the agricultural workforce (one of the key motivations for current evictions), which appears to continue, unabated and ignored, whilst land reform fails to deliver to the rural poor.

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<sup>4</sup> *Die Boere* (lit. meaning farmers) was a popular derisive term for the architects of apartheid, and of the apartheid governments since then, by anti-apartheid activists. *Die Boere* was used, I was told, as a term of derision towards any white person in a position of authority. In 2004, at the funeral of a well known activist, crowds of mourners carried placards reading 'kill die boere', so this analogy has continued.

The thesis concurs with arguments previously given by Andries Du Toit, that in addressing legal reform in agriculture, historical rural relations must not be ignored. Paternalism is therefore described via ethnography as well as via a brief examination of these historical relations and how they have been described in relevant literature. However, the thrust of my argument diverges from these sources in a number of ways. First, paternalism is taken as an indigenous concept as well as an analytic term. Paternalism is described through the ethnography of legal experience and through life histories of informants; it does not cease in legalistic relations, because despite the laws put into place by the constitution, with its wide ranging bill of rights aimed to address the disparities of the past, legalistic relations have the unintended effect of reproducing them. The legal actors involved are using academic writing on historical relations as a platform to translate them into a new language of empowerment by addressing them through human rights. Yet at the level of farm relations, on introduction to laws, farm workers and farmers might use such language, yet the nature of the relationship or conflict continues to be informed by paternalism.

My argument does not diverge significantly from those previously made by Du Toit (1993), but it addresses in particular the moments of eviction and expectations of change to paternalistic relations. I extend on his argument that neo-paternalism continues to be reconfigured (the ‘ceaseless return’ of paternalism (Du Toit 1993: 320) by arguing that the law itself has a key part in maintaining, by merely reconfiguring, these relations, and I analyse how this is so. The privileged few whose tenure is protected by ESTA must continue to live on the farm and in a relation to the farmer that is often fraught with hostility. Farm worker and farmer remain in the relationship of paternalism but this no longer appears to be bounded by certain levels of trust and loyalty that might usually form part of the paternalist construct. All that is left is dependency that might be manipulated due to the fragile power imbalance that is characteristic of the relationship. This continuation of paternalism is one of the unintended effects of the law under consideration here.

The following section of the introduction documents three ethnographic accounts of farm workers’ experiences of leaving farms. These accounts act as a kind of prologue; they provide an introduction to such narratives and experiences, and they will be returned to in other chapters and in the conclusion of the thesis where the



issues they turn up will be analysed in the light of the discussions and ethnography of the preceding chapters. For the purposes of this introduction they foreground the processes and dynamics of eviction and how exactly the law that is designed to specifically address this is reproducing evictions and exacerbating tension on farms. Narratives of protection that already exist in these relations are continued in legal domains. Rural relations are also foregrounded leading to a more theoretical discussion and literature review of historical paternalism on South African wine and fruit farms in the following chapter, where the argument of the thesis is clearly stated, in order to anticipate some of the conclusions towards which the ethnography in the remainder of the thesis points. Following the section on evictions, I briefly discuss why ESTA has failed to protect farm workers' tenure, and I follow this with some discussion of farm life. I do this in order to lead into the more substantive discussion of farm paternalism in the next chapter. This leads to a brief exposition of the main argument made by this thesis, and this in turn, leads to some discussion of legal pluralism as it is a central concept to thesis, all of which will be developed upon in Chapter one.

### **Evicting Farm workers**

In this section I focus on ethnography drawn from interviews with three former farm dwellers. The first example describes the experience of an illegal eviction or displacement; the second is an eviction that was redressed with the aid of the NGO Lawyers for Human Rights; and the third is an example of constructive eviction, where an occupier has not been made to move away from the farm but has had his electricity supply cut off in order to "make the conditions of residence intolerable" (SAHRC report on inquiry into human rights in farming communities, 2003: 60). More likely though, according to experts that I spoke to about these sorts of incidents, the action to cut off electricity to the house was either in order to intimidate the occupier to move off the farm and thereby circumvent the provisions of ESTA that protect the occupier, or to force the occupier into paying for the electricity. During the entire period of field work almost all of my respondents have faced some form of eviction at some point since the inception of this law, and various types of action were taken. However, eviction is not a new phenomenon on

wine and fruit farms in the Western Cape. Almost all the farm dwellers that I interviewed had been evicted in the past for various reasons that will be illuminated in the course of this introduction and in the thesis. The ways that evictions are being addressed are apparently new, in that ESTA is still young and part of the land reform programme of laws brought about in the late 1990s. Yet as shall be seen, the political relations that operate in eviction processes are caught up on in this nexus of, on one hand, hope in a new constitution and these new laws and the reality of continued inequality and skewed power relations.

The primary focus of the following narratives is to describe evictions or near evictions and it serves to address the following questions which will be returned to throughout the thesis. How do farm workers experience eviction? What are the circumstances that lead to evictions? What are the legal differences between eviction and displacement, and how are these translated by the people to which they apply, or by those that intervene? What processes and interventions are required to prevent evictions? To whom do farm workers turn for assistance, and in what respect has this changed since the introduction of laws to protect their rights to occupy farm housing. Indeed, how have farm workers' experiences of evictions changed over time? Inherent in these last questions are various interactions between farmers and farm workers that have historically been located in paternalistic relations, which are described in the first part of this thesis (chapters 1-4). Additionally, legal and property relations (in terms of housing and in terms of persons) come into play, as well as the interventions of particular agents or agencies in assisting farm workers with securing housing via the language of human rights. It is therefore clear that such questions inhabit a terrain far wider in their implications than simply how evictions are carried out or prevented. In answering such questions, the ethnographies that I describe momentarily foreground historical relations on farms, how these have been understood by social scientists and historians, and metaphorical notions of kin relations which highlight dramatic power relations and tensions.

The following cases (particularly in the case of actual eviction) highlight how people often find out too late about their legal rights, and even if they feel that a situation is unfair, the will of the farmer which was for so long 'law' for them, coupled with tactics by the farmer to influence proceedings in his favour, became the deciding

factor. In the second case it almost too late for the evictees, who had already lost their homes, but due to the intervention of Lawyers for Human Rights (LHR), they have secure housing and are at the top of a waiting list for brick RDP houses. The secondary intervention of a church in helping these people out with clothes, food and training in vegetable gardening, highlights important themes of my research – the role that church communities’ play in development, and the importance of social networks (particularly word of mouth). In the third case, as we shall see, access to justice was not sought by the occupier of the house, but was passed on to him by his concerned son and daughter-in-law, who had sought intervention for other farm dwellers in the case of unfair dismissal and retrenchment (as cited in the above example), turning attention towards family on the farm, a key part of paternalism and the subject of chapter two.

### ***Illegal Eviction without intervention***

I visited Beauty<sup>5</sup> at her house in Melrose Place in Xola Naledi RDP settlement. She lived in a tiny wooden wendy house with her two children and the rest of her family, including her 88 year old grandmother, lived in an adjacent RDP house. The house is at the end of a cul-de-sac and the full potential for building RDP houses on this street has not been met yet, so there was room on a plot next to the house for Beauty to set up the wendy house so that she and her children could have a room for themselves. We got to know about this case through Raymondt Barties at the Grabouw advice office. Raymondt had been contacted too late to stall or halt the eviction; by the time she went to the advice office Beauty and her family had had already moved out and a private eviction agreement had been agreed between the family and the farmer, a matter to which I turn in a moment. When I found out about the case, Raymondt was actually dealing with the case of monies that were owed to the family by the farm and by a well-known pension company and he was planning to negotiate compensation.

I interviewed Beauty in her wendy house and learnt how she and her family had been evicted. In 2002, after having been retired for over ten years on early pension,

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<sup>5</sup> The names have been changed to the case being sub judice at the time of interviewing.

Beauty's father, Dennis, died. The following is an extract from the interview I conducted with her:

When my father died there was me, my two brothers and my grandmother left in the house. My father was not buried yet. I was busy with the funeral plans at my sister's place in Cape Town when we got a phone call from the farmer saying that he wanted to see us both [her and her sister], and that he wanted us to vacate the house in a month's time (March 2003).

In 1991 Dennis retired early. According to Beauty, the farmer had promised him his pension, but after a year he had received nothing. He had had a policy in a group pension scheme. In 2001 the farmer had come to him with some forms to sign. At that time, Beauty says, he was then already sick. He told the farmer that he wanted all of his pension money, but the farmer told him that the papers he had signed meant that the money would stay in the group pension scheme for a further ten years. The farmer then agreed to give him a third of his pension, which amounted to R20 000. Dennis died the following year. He had nominated his eldest son to receive the money in the event of his death, but that son also died in the same year and there had been no benefactor nominated to receive the pension money.

When Beauty met with the farmer to discuss the eviction, she asked him about the rest of her father's pension money. He told her that he could only give her R300. At the same meeting the family was offered a sum of R8000 to leave the farm and Beauty was not sure if this was part of the pension money or if it was a deal to get them to leave. In any event, the family took the money, feeling intimidated and under pressure to leave and concerned about how they would be able to afford to rent somewhere else if they did not accept the money. Beauty's father was a long term occupier under ESTA as he had lived on the farm for over forty years and was over sixty years of age (see Chapter one). The farmer had waited until his death to evict the rest of the family. Had the family received legal assistance they would have been allowed to stay on the farm as her 88 year old grandmother was also a long term occupier and under the law the rest of the family could have claimed a right to stay in the house due to the 'right to family life' clause in the Act (see Chapter one; Conclusion). However, part of the eviction package that had been agreed to between Beauty and the farmer was that her grandmother would be given a one room house

on the farm and would therefore be allowed to stay. It is possible that with advice from a lawyer or a labour consultant who was aware of the provisions of the Act, the farmer calculated that this might circumvent those provisions in the Act. Raymondt also pointed out that the farmer may have assumed that Dennis was the only permanent occupier, but had agreed to house the 88 year old grandmother on the basis that she may not live for long, and to appease the evictee family. At any rate, it was assumed by Raymondt that it was the existence of the pension money and the potential for inheritance that had spurred the farmer to suddenly evict Beauty's family. Beauty and the rest of the family had to pack as many of their belongings as they could and moved off the farm immediately.

They bought the RDP house with the money that had been settled for the eviction and with a loan. Beauty went back to the farm every week to visit her grandmother and the neighbours suggested that she take her grandmother with her because nobody had been looking after her. Three months after the eviction, Beauty and her brothers came to pick her up so that she could move in with them. She felt that it had been just in time as she found when she got there that the farmer had been about to put her grandmother into an old age home without consulting with the family. When I asked how the farmer had intended to fund this she wondered aloud if it had been her father's pension money that would have been used. She never found out and was happy to be able to help look after her grandmother. Now there are nine people living in the small RDP house, accounting for the necessity of Beauty and her two children to be living in the wendy house.

The strategy of simultaneously intimidating Beauty and her family to leave the farm and offering a sum of money big enough to put a down-payment on an RDP house, led Raymondt to believe that the farmer had been aware that had he followed the legal procedure of eviction he would have lost the case, and would either have had to continue housing the family, or pay a much larger sum to re-house the 12 of them elsewhere. That he had also offered the grandmother a house on the farm would back this assumption up. ESTA would not redress the eviction as the family had agreed to move out, so Beauty and her family could only hope, at the time of interviewing, that they might get some compensation from Dennis' pension scheme. Such agreements and a high rate of mobility from farm to farm due to evictions or intimidation has

historically been a fact of farm dwellers' lives. This kind of arrangement would not have been seen by the family as particularly unusual, and because it was private, they did not have much opportunity to question the farmer's decision.

When I asked how Beauty had heard about the advice office she told me that she had only recently found out that she could get money for her children from the state. Her grandmother had found out when she had gone to the Gerald Wright Hall (a local municipality building where state departments had regular surgeries) to get her state pension. It was when Beauty had gone to sign for this benefit that she had found out through somebody there that she could get free legal assistance from a paralegal and she had then approached Raymond about the pension fund case.

### ***Illegal eviction contested***

On 21<sup>st</sup> February Walter<sup>6</sup> and I drove into an unremarkable piece of scrubland in the Somerset West area, to what was formerly Pynfontein Plaas<sup>7</sup>. On recognising Walter, one of the residents, an old man living in a former farm house near the roadside, called a girl to run and tell everyone that we were here. We drove round to where five wooden 'wendy house' bungalows stood and by the time we got there most of the residents had come to greet us. That day we sat on the steps of one of the houses in the sun and I was given various versions of events, some being highlighted over others, whilst Walter filled in various legal and extra-legal activities that he and the project had done. The people I was meeting knew Walter well, asked after him and his and made jokes. One small child present stood shyly with his mother and Walter soon realised that this was the baby that had been born in the midst of the violent eviction. Walter referred to him as he had been humourously named whilst the case was still under judgement: *human rights baby*. That day I was given various strands of narrative to fit together a story that was dramatic in every sense. I fitted these strands together with what I had previously read about the case, in newspaper clippings and funding reports at the LHR office. This was further necessary as so

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<sup>6</sup> Walter became my research assistant in January 2003. He had worked as a local paralegal for many years in Grabouw, and when I first met him he was working at the LHR office in Stellenbosch as co-ordinator for the Overberg Access to Justice Project (see chapter 1).

<sup>7</sup> The name of the farm has been changed. It is relevant here to note that the name of the former farm was always used in reference to this land, even still, by Walter and by others, even though it was municipal land when the tenants were forcibly evicted from the land.

many voices jostled to impart personal narratives that I was only able to note down partial fragments of those narratives and stories, filling in some of the gaps from memory in my notes when I got home and others from Walter's story of the case. Having heard and read this story before, I was witness to Walter's retelling of this story in front of the people involved. At various points people interjected with laughter or their own comments. Later I interviewed two women living there individually about their experiences and also conducted some semi-structured interviews detailing some of these farm workers' life histories.

This case was taken up by LHR three years prior to fieldwork, in 2000, when Walter was working as a paralegal there. Walter was keen to show me how, as a result of quick handling on the part of the lawyers who worked on the team, not only were the tenants provided with temporary homes and sanitation, but also work had been done with other members of the community to ensure more sustainable livelihoods for the families. Everybody was very keen to speak to me and also really pleased to see Walter after all the assistance he had given to them.

He told me that this was one of the most successful cases that the Security of Farm Workers Project (SFP) had ever had, and that he had been proud of the results that he and the rest of the office staff had contributed to. This case attracted media interest, in part because the attorney dealing with it phoned the newspapers in order to publicize eviction more generally. Walter also referred to all the other detailed legal, developmental and relational assistance that the office as a whole had given to the clients, as well as the success of the media intervention in speeding up the case. Walter had not worked on the SFP which was tailor made to address eviction cases that fall under the auspices of ESTA – his mandate was to oversee the Overberg Access to Justice Project – but he worked closely with his colleagues in the office and as a paralegal had been eager to help in any way he could with the case. He had got involved as part of the office team, however, and had also assisted the project in translating for one of the English speaking lawyers of the project when the Afrikaans speaking attorney was not present. He told me:

It was a big deal for the office, a big case. It was a big deal for me too, I worked very hard for these people. Even though the eviction case was

taken on by the SFP, I still sort of felt it was my baby (fieldnotes, April 2003)

He was still immensely proud of the achievements of this project but it very quickly became clear to me that ‘success’ and ‘achievements’ describe a multitude of assistance and ‘participatory’ activities that were prescribed neither by the mandate of the project, nor by Walter’s project. Indeed, most eviction cases do not warrant such attention, though training is often given on labour and tenure laws (see chapter 6), and this may be in part to do with the individual compassion that the individuals from LHR felt for these evictees as well as the extent of the drama and depravity involved in the eviction. In addition to the legal expertise of the team in terms of the eviction case (ESTA), legal expertise was also sought in private from individuals among the clients, and Walter, as a trained paralegal, offered his assistance.

On first arrival at LHR my attention was immediately drawn to this case because it was given considerable coverage in funding reports to highlight the success of the SFP’s work, the continuing problem of institutions’ and agencies’ misunderstanding and/or abuse of the (ESTA) law, and also the success of involving media to publicly draw attention to cases of this type, and to ‘shame’ the perpetrator. It was an ESTA case because of the definition of the land that the houses were on, although no farmer was actively involved in the ESTA process that the case took – it had been the municipality that ordered the eviction. However, consent had originally been given to the people living on the land by the former farm owner.

The farm that the houses were on, just between Sir Lowry’s Pass and Strand, had gone bankrupt and the local municipality had bought the farm – it was then sold to the National Roads Agency. There were only five houses and as a result all the people living there had close friendships already. The council had tried to forcibly remove the families with no prior notice – a lorry with council workers had showed up on a Friday afternoon during winter, and they were told that if they did not leave the houses now they would be forcibly removed. They refused to leave their houses as they had nowhere else to go. The municipality workers began to remove furniture from the houses and everyone watched as their belongings were thrown about and damaged. That night security guards hired by the council arrived at the land to make sure that nobody had access to their houses or belongings:



We watched as those guards used our furniture for fire wood. Every time we wanted something from inside our houses we had to sign for it and it was our own belongings. A lot of our things were stolen too – people had heard that we were evicted and roamed the grounds looking for things to steal (John, tenant, from fieldnotes, March 2003).

The only reason given for the eviction was that the council was to destroy the houses; the day after the eviction the council sent in contractors to demolish them.

Emily had been living in a broken down barn on the farm which had one room that was waterproof. She took everyone in and cooked a large pot of food for everyone that night. There was a toilet there too. Emily had previously been evicted from another farm and had heard about Lawyers for Human Rights. For about ten days the families ate and slept in the partly ruined barn, relying on Emily for food and shelter. Only John was quite independent. There was one room in that barn that didn't have walls, just part of a roof. That was where they cooked, played games and talked. Michael and Sarah slept in another room that had part of a roof; they told me the privacy they sought was marred by the intrusion of snakes and rats. The municipality then came and broke down the toilet – now there was no sanitation. They had to go, they told me, in bushes in the middle of winter. The NGO was contacted, and during the weekend one of the project lawyers went to the family and recorded statements in order to make an emergency case against the municipality in terms of ESTA. Photographs were taken of the houses and the barn and of those damaged belongings that remained.

LHR took the municipality to court and won the case. The municipality was ordered to provide housing and toilets for the evictees. They agreed to a certain amount of money for the wooden houses and while these were put up, each family were placed on the RDP housing list. A family of three or four got a two roomed bungalow, whilst the one single man was given a one roomed bungalow. Each bungalow, by the time I arrived, had been secured with heavy duty industrial wire due to the danger of them blowing away in winter storms. With the current crisis in RDP housing provision (see Pillay 2002: 255), many people are still on waiting lists for RDP houses, and this holds true for these tenants. They are now at the top of an RDP housing list for a settlement which is still under construction and since the bungalows belong to the tenants they will be allowed to take them with them to extend their new

houses. They were also, after a long wait, provided with chemical toilets. The families now reside in these wooden houses, built in a row, on the land opposite where their former houses had been, and one family lives in the old farmhouse.



*Figure 1* Farm dwellers outside 'wendy house' style wooden bungalows provided by municipality, with Walter (far right).

There were several interesting facets to this case. First, a police officer had victimized the tenants at the time of the eviction. With the help of Walter, they laid a complaint against him and he had been asked to come and publicly apologize. This action was taken to redress the denied constitutional right to dignity, I was told. Second, through accessing legal means of redress in this case, one of the women told me how she had found out how to get help from the law for protection against domestic violence (a theme that recurs, see especially chapters two and five). The frustration with the situation of eviction had led to an increase in family violence from her husband. She told me that even with the help from Walter she had found the legal recourse to justice intimidating:

I went to the doctors, the police and the magistrates. When we went to the magistrates there were ten people waiting all day and only one court official. You could only get help once the magistrate was finished in court. If you couldn't read or write you were sent home because you had to fill in the forms. I could write but I couldn't really understand all the words, the... jargon on the forms. I filled in the forms with Walter's help and I got a court order against my husband because it seemed like he was going to kill me (Hennie, February 2003, fieldnotes).

With all the hallmarks of a tale of biblical proportions, clear transgression and abuse of human rights that also highlighted a dignified narrative of community and survival, the project notified media, and the story of the cruel and sudden eviction appeared in a national Sunday paper<sup>8</sup> a week later. One of the foci of the press was how on being evicted, a baby was born in the barn in the middle of winter; Walter had nicknamed this baby ‘human rights baby’. For South Africa’s Sunday Times readers this would have seemed Dickensian, not in keeping with the spirit of the new nation. Of the daily illegal evictions happening close by, however, they would not have been aware.

A relative of one of the lawyers involved in the case appealed to her church community to help the people while they were waiting for the new bungalows. Bags of food, clothes, shoes and blankets were brought to them, and once the bungalows had been built they also brought kitchen utensils, flower and vegetable seeds, chicken wire (to protect the new gardens from the cows that still roamed the fields around), garden utensils, hammers and nails. Later, they sent horticulture experts to train them in making their gardens sustainable food sources. This has proved useful to the families as there is only seasonal farm work on local farms for the five men there; the women were not, at that time, working.

This ethnographic example exemplifies a key moment in the history of ESTA. The case was closed well before my arrival, but in some ways it showed a ‘golden age’ when this law was mobilized to some effect on behalf of evictees, in contrast to the situation as it stands now. It also shows how it is not just farmers who misunderstand or ignore the law, as Greenberg argues in relation to municipality owned settlements and the insecure tenure therein (2004:1; 10-13)<sup>9</sup>. Moreover, the fact that the case was closed enables further analysis of the way in which those involved talk about it now in retrospect, possibly highlighting important discourses of empowerment to which people refer when discussing their own agency and involvement in various stages of litigation, as well as being an indicator of their reading of dignity in discussing the hardships that they put up with. Indeed, while telling me about the policeman having

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<sup>8</sup> 30 July 2000 ‘Baby Born in Barn following Eviction of Farm Workers’.

<sup>9</sup> With cases that resonate with recent ‘urban renewal strategies’ in Zimbabwe.

to publicly apologize to them, various members of the group cracked jokes about him and everybody commented about that day. The right to dignity had apparently been restored to these families through the public apology.

Though not a typical example of farm evictions, with no farm owner and a fairly positive outcome, this case highlights the way in which farm dwellers are given little concern in land matters. The municipality arbitrarily and illegally tried to evict them in order that a through road might be built, without any apparent concern as to where they should go. It is a case where it is easily seen how the law regarding evictions from agricultural land was ignored, and it is also significant in that it shows how other concerns resulting from desperate hardships were addressed by the plaintiffs and by Walter. Going through an ESTA case highlights other problems that tenants may be experiencing, such as poverty and domestic violence (as was also raised in an ESTA training session for paralegals). But these people were no longer dependent on farmers for shelter and services. However, they had depended on a tacit understanding with the former farmer that they might stay on the farm after it had been sold – a form of protection that might be described as paternalistic (see chapter 1). Now they were dependent on the help of lawyers, on the municipality, and on support provided by a local church community, but the security of their jobs was not at stake. Most of the adults living there were still doing seasonal or contractual farm labour on local farms.

### ***Intimidation to leave: illegal 'effective' eviction?***

Nikki lives on the same farm as his son and daughter-in-law, who told us that he had had his electricity cut off for some time, and asked us to call on him. Because he was still mourning the death of his wife, and was also often out visiting his daughter in town, it was difficult to arrange any time to speak with him. On the occasion that we finally got to speak with Nikki Du Vries, Raymond, the local paralegal in Grabouw, was also visiting his clients on the farm. We had been talking to Mr Du Vries about his life on the farm when Raymond and his assistant came to ask him some questions about his electricity, also at the request of Nikki's family. He was already quite upset, having told us about how all his working life he had been loyal to the previous farm owner.

Under the ESTA (section 8(4)), Nikki is a permanent occupier, and his tenure is legally protected. I outline the relevant section of the Act in Chapter One, but here it must be noted that this section only protects the tenure of someone who has lived on land owned by another person for over ten years, and is over 60, or was or is an employee of the person in charge and is incapable of working due to ill health, injury or disability. Nikki falls under the first category, in that he has lived on the farm for over ten years and he is over 60.

Nikki was raised on this farm from when he was a baby (his parents had moved from a farm outside Stellenbosch in search of employment). He is now retired but worked on the farm for the whole of his career. Primrose farm and the farm adjacent were formerly one very large farm. When the farmer died, his two nephews inherited the farm and it was split into two farms (the other farm was then sold and is now owned outside of the family). Nikki grew up playing with the farmer's nephews and went to school at a farm school nearby until Standard Four, at which point he started to work for the farm and bring much needed income into the family home. He lived in the same house until he married, and then he and his wife were provided with the house in which we now talked to him; he had by that stage been working for a number of years, and he and his parents were well trusted and, indeed, quite friendly with the farmer and his family.

Walter was concerned that cutting off this man's electricity was 'effective' eviction. Since he was over 60 *and* had lived on the farm for over ten years (almost his whole life, in fact), the clause in ESTA that means the occupier is a permanent occupier<sup>10</sup> applied, and his tenure was protected. This clause stipulates that the occupier has the right 'not to be denied or deprived of access to water' (19 November 1997: Chapter III, 6(2) e). Further, according to the Act, occupiers 'have the right of access to services agreed upon, such as electricity, water and sanitation' (Hall et al 2001:4). Walter believed that cutting off the electricity of a permanent occupier was a determined and willful act of effective eviction, and at the very least it constituted intimidation to leave the house because the farm owner was neither pursuing formal proceedings nor complying with the Act, and was most likely was aware that Nikki,

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<sup>10</sup> Government Gazette No. 18467, Act No. 62, 1997 Extension of Security of Tenure Act (in Appendix).

who lived alone in his house, was a permanent occupier. Other evictees on the farm, including Nikki's son and daughter-in-law, had been warned that they would be evicted in compliance with the Act, but also had their electricity and in some cases, water, cut in apparent attempts to charge for the services in the absence of rent.

Walter and I interviewed Nikki and he told us the following about his life on the farm:

Mr Du Vries: I have lived in a house on this farm all my life, all of it that I can remember. When I married my wife we came to this house. The house where my parents were was on the other side of the settlement. We all worked hard for that man – my parents were trusted by him and so was I. This boy, this farmer now, my mother used to put him on her knee and play with him. I was older than them. Sometimes they came here and my mother would watch the two boys.

[pause] I helped that other farmer to dig the reservoir down there, and I worked hard every day or over 50 years. I didn't mind, but it was very hard work. How am I repaid? I must carry my wife out by candlelight on the day of her funeral because they take away the electricity (July 2003, fieldnotes).

The sense that he had been fundamentally let down by the current farm owner was keenly felt. He superimposed the past onto the present: when he talked about the problem with the electricity being cut off he would relate it with the amount of work he and his family had done for the farm owner, and his family's personal involvement with the farmer's family, over the years. He spoke in terms of manpower and physically demanding work, putting emphasis upon his loyalty to the farm and the trust and responsibility that had been placed in him by the farmer. He also spoke of familial relations between the two families; his sense of injustice was thus twofold and personal. It reflected emotional and nostalgic sentiments towards the former paternalistic relation between farm worker and owner, and some shift away from this type of relation by the new farm owner (see Chapter two). That his electricity had been cut off was certainly not a crime or a matter of law to Mr Du Vries; it was a personal insult to how hard he had worked and to his commitment to the general good of the farm over the years (see Conley and O'Barr, 1990 on rule orientation vs relational orientation; see also Yngvesson 1994; Merry 1990). He was quite aware that he was allowed to stay in this house as a permanent occupier and, though he sometimes stayed with his daughter in the town and had his son and his

family in a nearby house on the farm, it was clear to us that this man valued his independence. It also seemed clear that the intimidation through cutting off electricity was a practical measure by this farmer to force the family to consider Nikki's moving out of his house; as a pensioner he could not afford to pay for electricity himself and since he lived in this spacious house alone the farm owner probably considered his staying of great financial cost to him.

Long retired, Nikki's frustration and nostalgia are directed towards the new farmer and the farmer who had owned the (larger) farm when he was a young man, respectively. He had known the previous farmer since childhood; he and his wife had worked for him and he had been trusted and protected by him. However, the current farmer was a relative of the older farmer, but displays a different attitude. Nikki knew the current farmer when he was a child and Nikki's mother had dangled him on her knee, and does not understand how he can behave so indifferently when he has displayed such loyalty. Nikki is treated with callous disregard by the farm owner, and the farm management looks very different.

This has been observed by many who have studied sociality on farms in South Africa. The fact of 'management' *per se*, reveals what du Toit (1993) and others refer to as neo-paternalism, established in the modernizing developments of agriculture in the 1980s. The contention that this new form of management attempted to move away from historical paternalistic relations, but failed to change relations of farms substantially, merely reproducing conditions in which these relations continued to operate (see Chapter one).

When Raymondt and his assistant arrived, Nikki seemed tired but told us all again more of the details of the electricity cut. I looked around his house – everything was old but very well kept, the house was dark and very tidy. He had a wind-up radio in his kitchen that he listened to. I noticed that near to the portrait of his wife on the wall of the lounge were ANC tags pinned to some string on the wall; there was no television (unlike in other houses where electricity and water was cut and TVs were covered with a sheet because they could not be used). Raymondt listened to the story and concurred with Walter that this amounted to intimidation. Nikki Du Vries was being pressured to leave without eviction actually being attempted, which would

have been illegal; the farm owner had even known not to cut his water off, which would have aroused more attention under ESTA. The condition on which Nikki would have been allowed his electricity back on was for him to pay for the service which, according to ESTA, should be provided by the farmer as it had always been, due to his status as permanent occupier. Raymond told Nikki that he had the right not to be intimidated in this way, and that this action was illegal. Mr Du Vries remained tired looking and said he was just hurt and reiterated, with tears in his eyes, how the electricity had been cut on the day of his wife's funeral, and how he had had to take her body out of the house by candle light. He was not so upset about losing the electricity; it was the timing of the act that hurt him the most. Indeed he had managed for months now without electricity. Raymond again told Mr Du Vries that it was a criminal act to intimidate him like this and suggested that he take the case to the police. Mr Du Vries replied that he would not go to the police. He said 'if you want to go to the police about this, I don't mind, but I'm not going to do that myself' (July 2003, fieldnotes). Walter gently asked permission from Nikki to take this to the police and Nikki shrugged his concession. Raymond, who as always was very busy, asked Walter and I if we wouldn't mind going to the police, so on our way home Walter made a formal case on behalf of Mr Du Vries at the local police station in Grabouw village. When we inquired about the matter several weeks later the police told us that they still had not pursued the case.

Drawing from the work of Conley and O'Barr (1990) and others in the field of legal anthropology (Yngvesson, 1994; Merry 1990), one can see clearly in the above description that the modes of analysis of the paralegal and of the client differ completely. Mr Du Vries sees this as a moral issue; the farmer owes him if not gratitude for his hard work over the years then some sort of moral obligation not to treat him this way just when his wife had died. This insensitivity was crucial to his emotional reaction. The paralegals, on the other hand, whilst being sympathetic to this elderly man's emotional trauma, had to immediately translate a moral and relational issue into a legal one for the sake of the police or the courts, should it get that far. The police, however, failed to take this seriously as a case. They filled in a docket but did not interview either the farm owner or Nikki. An issue that is emotive in substance becomes a legal docket or case with new language centred on



‘intimidation’, the right to dignity, and even the right to tenure security and services inherent to it, which had been violated according to ESTA the moment the farm owner had cut the electricity. For the paralegals, the issue should be taken to the police as a criminal matter so that the police can be made aware of the criminality of this act; the police did not really think that the act of cutting off electricity was criminal.

When I next saw Rosie, the Security of Farmworkers Project (SFP) implementor at LHR, I asked her why she thought the police were dragging their feet with this matter if it violated ESTA. She told me the case of cutting off this man’s electricity was somewhat weak, because his water had not been cut off as well. ‘Water is the basic service that ESTA stipulates’, she said,

Having one’s electricity cut off is not seen as being as serious a matter as having the water cut. If he had had both services cut it could be taken more seriously. As it is, ESTA is a bit vague on this because it provides for protection of access to ‘services agreed upon’.

I asked her if Walter and Raymondt were correct in understanding it to be an act of intimidation to leave the house. ‘It probably is’, she said,

But there must be proof that this service was agreed upon, otherwise if the farmer is charging other people for services it would seem normal to him to insist on everyone paying for them or losing them. In any case, if this farmer is telling the farm dweller that he must move out then the provision of services could be addressed by making contact with the farm owner and relaying to him this man’s tenure rights. But he is not doing this, and the police will probably not see the insistence of charging for electricity as a criminal act. It is difficult to prove that this is intimidation. Look, this farmer has already had a letter from me about the other evictions he has threatened, and he will eventually get his way with most of them. He seems to be learning what to do, how to get around the law (July 2003 fieldnotes).

As noted above, the police, who are dealing with more serious and violent crimes in this rural hamlet (with a population of over 50 000 people, the majority of which lives either in RDP housing or in informal squatter camps), did not seem to have time to address such a seemingly petty and ‘private’, domestic matter, at least while I was still there. Further, Nikki was not making the complaint himself. Even when the police were made aware of the criminal nature of the act and the vulnerability of the

old man, they were reluctant to bring a case against the farmer over such an apparently trivial matter.

There is another level to this, and this is not at the level of legal proceedings, but is to do with the relationality that Nikki feels, and the less relational calculation of the farm owner. The farm owner clearly did not see Nikki as the boy whose family used to look after him, or as the man who had devoted the whole of his working life to the success of the farm; these relational aspects did not configure in the plans of the farm owner, who was taking a much more business focussed decision about the house and the future of tenures on his farm. He chose a day (as insensitive as it was) when he knew that Nikki would be preoccupied. Indeed, as I refer to also in chapter three, other farm dwellers on the same farm reminisced about the days not so long ago when relations between them and the farmer had been better. They saw this new farmer as a bad man who took away privileges and perks, and who eventually withdrew work and threatened eviction. They saw the past, under the old farmer, as a better time when they were afforded protection and were looked after to some extent. But paternalism has certainly not disappeared from either these people's or Nikki's lives. The ways in which they all relate to each other depend on the still evident paternalism on this farm. Since I look at the manner that they do this in depth in Chapters one to four, I do not discuss it further here.

### **Evictions in the new South Africa**

Each of the ethnographic examples I have raised and discussed above will be referred to throughout the thesis, and each is particularly re-examined in concluding it. The questions I set out prior to these descriptions are answered fairly explicitly, but they will be addressed throughout the remainder of this thesis as well. They are not the research questions that guided research and analysis – these are set out in Chapter one and expanded on in the remainder. The responses provide us with a picture of dependency, vulnerability and insecurity of rural life in post-apartheid South Africa. But rural relations have not actually changed an awful lot if we look at them in relation to the history, and the anthropology, of rural life in South Africa. The following section draws out some of the themes and comparisons that emerge from

each example above, thus setting up an analytical framework for the thesis as a whole and the first part in particular.

For Beauty, once her father had died she and her whole family's relationship with the farmer was apparently cut through intimidation. For Beauty and her family, the farmer had taken action on behalf of Dennis to organise how and when his pension would be paid. While intimidating the family to leave, the farmer made a monetary offer the nature of which was unclear to the family: what was the money for and why was an amount of R800 offered? At the time of research, Beauty worked in a large apple packing shed, but ties remained with the farm through her father because of the outstanding matter of the pension money. However, since the local paralegal had taken up this case, there was no further direct contact with the farmer, but paternalist discourse informed relations up until this point and the law was not drawn upon to protect the right of the family to continue living on the farm. The power of the discourse of family was drawn on in this account, for Beauty was forced to go and collect her grandmother, even though her tenure<sup>11</sup> would have been guaranteed by ESTA, which protects tenure of those over 60 if they have lived on the farm prior to 1997. Had the family approached the paralegal at the time that the offer was put on the table, they would have found their tenure protected. However, as they had always done, they took the farmer's word at face value. If they had suspicions regarding the pension money, the farmer focussed attention on a settlement to get them off the farm, an act of intimidation that took the spotlight away from pension fraud, and this provoked the family into finding somewhere to live with the paltry amount offered. A mixture of trust and intimidation is therefore evident in these transactions. Historically, farm workers have been familiar with such offers to leave the farm, and could see no other way out. Throughout the first part of this thesis I examine the micro-dynamics of such relations, and what changes, if any, take place in them when a family is allowed, through legal assistance, to remain on the farm.

The second example no longer involved a farmer, but an understanding had been met that when the land was passed on, the farm dwellers would continue to live in their houses. This understanding had been a verbal agreement between the former land

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<sup>11</sup> And through her, theirs also – see chapter 8 on the right to family life.

owner, who had lost his land in liquidation and had no rights to actually make this agreement. The municipality viewed the occupiers as illegal squatters so that the prior understanding was challenged by local government in such a violent and draconian manner that one media report compared it to Dickensian England (despite more apt and recent conditions of apartheid perhaps coming to mind more easily). However, the prior experience of the process of eviction of one of the people living there afforded them all knowledge of how to access free and immediate legal assistance for this matter. Domestic violence continued to inform the lives of these farm workers. However, their ability to support and look after each other is not prevented by a paternal authority in the shape of the farmer. Poverty characterised these families' lives, particularly in the event of the enforced evictions. But some of the decisions made by the various officials towards the farm dwellers were informed by an embodied disregard for 'dignity' of coloured farm workers, exemplified in the manner in which their property was treated. Even the police, they reported, treated them as criminals. As the law took its course, a discourse of victimhood was perhaps more explicit, but was addressed.

The personal betrayal felt by Nikki, and the fact that he simultaneously did not want to personally go to the police, show how this old man's vulnerability rested on his life long experience of familial kinds of relations between his own family and that of the farmer. It was almost as though he mourned the end of a relationship based on his own and his family's hard work for the sake of the farm, and the bonds of trust that had been forged over years. Reluctance to take the matter into legal proceedings may also be explained by reference to the fact that the behaviour of the farmer had not been based on any tacit understanding between farmer and dweller. Worse than this, the act had little legal or political meaning to Nikki as it had offended the grief that he was going through over his wife. It contrasted dramatically to past relations that Nikki and his family had known with the former farmer's family, thus heightening the feeling of personal betrayal.

For many farm dwellers, changes in relations between themselves and the farmers are difficult to stomach (Orton et al. 2001:474). For example, one female farm dweller complained 'the farmer's wife used to come to the houses with blankets when the weather was cold, and at Christmas they would bring everyone gifts. Now

there is no trust' (Fieldnotes). The felt loss of these privileges made people nostalgic about the past, even in cases where developmental aspects of laws had the potential to improve people's lot, or at least to guarantee them security of tenure on the farm. The idea that people would feel nostalgic for a paternalistic past seems anathema to the rights discourse in which rights should provide protection. But paternalism has always been maintained by an ethos of protection along with control, and it is protection that is also missed. Additionally, the law can only offer so much protection, and in instances where protection offered by law denies them protection from the farmer, former relations with farmers are viewed with nostalgia, in spite that farmers' protection was always also limited.

Access to justice is still very limited in rural areas in spite of the best efforts of NGOs and in particular of local grass roots (community based) paralegals, such as Raymondt in Grabouw. Unions have been organising on many farms but much organisation has fallen by the wayside due to mounting tensions to which unionisation had partly contributed. In addition, unions in Grabouw have faced problems with their legal existence<sup>12</sup>, as well as problems of internal structure, and have at times 'disappeared' when needed most. Problems within unions, as well as problems that they have themselves caused, means that farm workers do not trust them with their problems. Farm dwellers have, though, become (incrementally) more aware of their rights and this has in turn created a paradox as some workers use their partial knowledge to get the farmer to change practices, when farmers have felt that the workers are trying to take advantage of them (see Chapter Two); farmers themselves do not always see this as a positive thing. Meanwhile, as well legal awareness among farm dwellers being scant, not all farm workers are becoming aware of the laws, so this trend is not uniform. Many farmers, on the other hand, are getting to grips with ESTA and using it in their favour, as they see little in the law that protects them and their property rights. In Chapters Seven and Eight there is some discussion of how farmers feel that they have been labelled as rights abusers and as such feel victimised.

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<sup>12</sup> The Grabouw advice office closed while I was doing research there, because the legal existence of the union that funded it had been challenged (see chapter 7).

The case of the contested eviction highlights how even government departments such as the SAPS and local municipalities misunderstood the ESTA law. It also shows the importance of paralegals in helping to shape people's understanding of how various laws could be of use to them personally. The lawyers litigated the eviction case in the courts whilst Walter was helping Hennie to deal with the inaccessible bureaucracy associated with the law when she was dealing with domestic violence. Also through the assistance of local community, bonds were forged that crossed former racial divides outside of the legal measures.

### ***ESTA's failure***

Were legislation such as ESTA and new labour reforms designed to address paternalism? Insofar as they are born of the Constitution which was designed to address inequalities of apartheid, then they were. However, ESTA was drafted to address the proportions of evictions happening on farms at the time, but because of the negotiated nature of the Constitution, property rights were also given much credence in land reform legislation. Property rights therefore informed the writing of various laws. The incompatibility of property rights and tenure rights, both enshrined within the Constitution, meant that writing new laws were tempered by these considerations. As we shall see in Chapter One, ESTA only protects a small proportion of farm workers fulfilling certain criteria; since the protection of property rights of farmers had also to be guaranteed for farmers.

This offers only a partial explanation as to why ESTA could be said to have failed. It was argued by people working with ESTA that to some extent it was the way in which the law was badly drafted which contributed to the failure of ESTA to prevent farm workers from being evicted arbitrarily. For the organisations and individuals working with farm workers, such as paralegals, the raft of new laws were seen, at best, as not going far enough, as being 'without any teeth' (a quote from one paralegal discussing his first impressions of ESTA), at worst, as failing to protect people's Constitutional rights. This could be said to be due to private property rights, as stated above, but I suggest that action and inaction following the inception of these laws further contributed to the ESTA's failure.

One way in which it might be useful to address this question, is to look at exactly *how* ESTA has failed since it was enacted. One way in which ESTA failed is that so many farm dwellers and farmers were simply unaware of its existence. Many farmers were evicting farm dwellers in the way they had always done, and farm dwellers were complying because this was how it had always been. This is seen clearly in the eviction of Beauty and her family described above. However, for those farmers that were aware of its existence, if not of its provisions, it seemed an opportune moment to change conditions of employment on farms, with a move away from tied housing to employing farm workers on a seasonal, non-permanent basis. For those farmers that were aware of some of the provisions of the Act, the long-term problem of continuing to house ‘permanent occupiers’ was managed at this time by mass eviction of tenants to whom this section of the law might apply. This explains the significant increase of evictions at this time, as cited above.

The wider scope of land reform further added to the expediency of changing labour conditions on farms. During apartheid, agriculture was subsidized by the state. Following democratization, South African agriculture entered the global market, and farms were no longer subsidized as before. Farm owners faced increased insecurity from global competition (Kritzinger et al., 2004). Cheaper sources of labour now became part of a necessary restructuring of farm management, and out-sourcing of labour coupled with the new practice of retrenching permanent workers and providing housing only for rent became a rising trend during this period.

This restructuring also followed more limited restructuring of labour relations on farms during the 1980s, when modernization of management techniques was introduced on many farms. Ewert and Du Toit (2005) discuss the limited effects of these changes on paternalistic relations, arguing that modernization merely restructured the conditions for paternalism to be continued:

The selective introduction of elements of ‘modern’ organisation and the partial compliance with labour legislation have resulted in a wide range of hybrid formations – strategies that rely simultaneously on elements of both traditional paternalist and modern capitalist management approaches (2005: 317).

Against this backdrop, then, further labour legislation has seen farm management techniques restructured again on Western Cape farms. ESTA came at a time of

uncertainty for many farmers, as they faced increasing globalized competition. The double effect of ESTA for those farmers aware of its existence, was a fear of long term protection of tenure for farm dwellers, and insecurity of the future survival of the business. Further, farmers would have been aware of their property rights, as guaranteed by the Constitution.

As ESTA became better known, the effects of its provisions were apparent, and farmers continued to make their own provisions to offset the trend of protection for long term occupiers' tenancy. The limitations of this Act to protect all occupiers, however, provided farmers with opportunities to evict those that did not fall under this category. In addition, the government was ill equipped to deal with claims and counter claims under this new law. Indeed, as this thesis shows, litigation and representation of farm workers was undertaken mainly by legal NGOs and rural advice offices; the Department of Justice and the Legal Aid Board simply did not have the capacity to take on the number eviction cases, and farm workers facing eviction mostly did not know either of the laws that had been enacted, or that there was any legal recourse. Various labour laws had been brought in at this time that directly effected farm labour, but compliance with such laws was not policed, and this coupled with a failure of the various government departments to work together effectively.

As noted, lack of awareness of various laws and institutions also compounded for their failure to protect the rights of farm workers. For instance, one eviction may be preceded by retrenchment. Retrenchment may have been unfair, and if so, a case of unfair dismissal might be taken to the Commission for Conciliation, Mediation and Arbitration (CCMA). First of all, the farm worker must be aware that this recourse exists. Second, to litigate an ESTA case, the CCMA hearing must first have been heard and decided. If a farm worker was unaware of these processes, the farmer will more likely succeed in evicting the farm worker and his family. Following eviction, neither an unfair dismissal case nor an ESTA case can be followed, as the farm worker has complied with the farmer.

All of these factors contributed to this law's failure, and will be interrogated further at later stages of this thesis (see especially Chapters One and Six).



### ***Life on Farms in South Africa***

In this section I sketch out what life on farms is like in order to provide some context for discussion and ethnography above and in the pages that follow. This also provides an analysis of what paternalism, of central concern to the argument of this thesis, means at an everyday level on farms. In Chapters two to four, the effects of paternalism are analysed for farm workers. Here, I describe what life is like on farms to set up the context for these discussions and also for the overall argument of the thesis, set out below and more thoroughly in Chapter One. Further, I look here at how life on farms compares generally to rural life in South Africa overall – in other words, how paternalism has manifested itself outside the context of the Western Cape (as it is discussed in this thesis), according to other academic analyses of farm social life on farms in South Africa.

Whilst conducting research, I visited and got to know many farm workers who were not, at that time, being threatened with eviction. Many had faced, if not actual eviction, intimidation from farmers at various points. The livelihoods and home lives of farm workers living on farms are characterized by dependence and particular forms of vulnerability. This vulnerability is most commonly experienced through periodic insecurity (see Chapter Four), but for women farm dwellers it is intensified by relations to the farmer and to their husbands, and their relations with one another. These relations are characterised, then, by these various levels of dependency and these are played out in myriad ways.

In vineyards and on fruit farms life and work define one another. Men and women work long hours outside, particularly during harvest season. Men have tended to be employed as permanent labour, particularly if they had families. Dependents – wives and older children – were drawn upon to do picking and packing work during high season. Women have never earned the same as men, usually as a consequence of skills required for certain kinds of work. During harvest, children would have to put education aside for a time, either to do the work of the farm or to carry out household work such as looking after younger children while both parents were out working. For this reason, most of the farm workers and dwellers I talked to had very low levels of literacy and education. Most older farm workers had stopped schooling altogether

at the ages of 12 or 13, having given themselves over to farm work or household work. This depicts not only the financial insecurity and illiteracy of farm workers lives, but also the dependency of families on minors for financial income.

Larger estates have had, for the past two or three decades, their own schools and clinics. Some of these practices can be put down to modernization strategies known as the Reform Programme, discussed by Ewert and Hamman (1996). Much of social life is thus contained on the farm. Some farms also had community halls and other provisions such as a farm shop. Occasionally one might even find a small church on a larger farm. Christianity is a key feature of farm workers lives. Many coloured farm workers are followers of the Afrikaner Dutch Reformed Church, the conservative Calvinist rooted church, which was closely associated with the National Party, the engineers of apartheid. Most coloured farm workers I met were Christian. Their moral notions of family, and fairness, are rooted in their religious beliefs. Historically, farmers and slaveholders introduced their slaves and workers to Christianity, although it is a prominent feature of coloured identity more generally (via this history of slavery – see Goldin 1987).

Alcohol and alcoholism are prominent features of wine and fruit farms. The tot ('dop') system of payment was put into place by early settlers in South Africa, as 'a means of a means of inducing indigenous peoples into agricultural labour' (Dopstop 2005: 2). This practice continued as a way of 'making the abject conditions under which [farm workers] lived and worked on farms more bearable' (*ibid.*). Although the practice of payment in wine is illegal, unofficially it continues, with cheap wine being made available to farm workers via farm shops, on wine farms, and *shebeens*. Alcoholism continues to have horrendous consequences for farm workers. Children continue to be born to farm workers with foetal alcohol syndrome, and other effects are fighting, murder and domestic violence. The effects of alcohol means that farms are somewhat dangerous places. However, as shall be seen, many coloured farm workers that I interviewed preferred the relative security of tied housing and the advantages of paternalism to living away from the farm.

Paternalism is based on the extended patriarchal household that transcends race and class, an organic family like organisation whereby the farmer assumes the role of

father. This is variously a benevolent as well as punitive role, and within its hold a variety of power disparities are played out that is the focus of much of the ethnography in this thesis. According to Van Onselen, at an every day level, 'the power exercised within the relationship flows through the conduit of gender and is mediated through the actions of two patriarchs of differing power' (1992:134). These two patriarchs are the farmer-father figure and the male household head who is 'expected to exercise appropriate power and authority over his wife and children' (*ibid.*). Age also contributes to the effect of this power for Van Onselen. Deference for male seniors, by example of the farmer father figure as ultimate senior, is encouraged throughout the farm. Patriarchy of this sort is already a cultural part of South African society in general, and fits in with the morals and values of Afrikaner and African cultures, so is accepted as a moral discourse with little question. However, also noted by Van Onselen, a change in structure of the farm (the death of the farmer and inheritance by his younger son) might shift this balance so that the farm worker is the senior of the two males (Van Onselen 1992: 135), as with Nikki in the description above.

Everything that goes on in the life of the tenant family on the farm is constantly mediated by the life of the farm (of the farmer and other farm workers). As children grow older, they must defer not only to their own father, but to the farmer too, as they are taken out of education and put to work on the farm. This may put a strain on the family, but also on relations between the tenant and the farmer – as for Van Onselen's share croppers – who are ultimately responsible for the behaviour of their children in the workplace, as well as at home.

Children of coloured farm dwellers often move out when they marry or have children. Often this merely means the farmer providing the young adults with a house on the farm, depending upon how well these young farm workers get along with the farmer. If, for example, the man in the relationship has been retrenched, it is expected that the couple would attempt to find work and housing at another farm. Men are thus expected to do skilled manual labour of the farm's work, with women employed on a seasonal basis for picking and packing work. There are other familial expectations. In an example I describe in Chapter five, a young woman is expected to go and work in the farm house kitchen as a 'house girl' on another farm where her

mother's sister had worked. Because the farmer will only employ female members of that particular family, Eveline is expected to take her affine's place should they fall sick or die. In this example, we see how paternalism cuts across from farm to farm, and how the responsibility is often shouldered by the women, the young men retained for the manual labour of the farm. Dependency on family cuts across farm in this and other ways. For example, a woman may return to the farm where her parents reside on the breakdown of a relationship, or may send her children to reside there when facing financial difficulties (see James 1985 on how these dependency relations inform family structures for leaseholders in Lebowa). In many of the lives of farm workers who I spoke to, these arrangements were quite normal.

Evictions have added increased pressure of familial dependency nowadays. On eviction, families may rely on parents living on other farms for a place to live, this putting pressure on their own tenancy at times. Alternatively, they will turn to relatives who live in informal settlements, and build on to existing houses, as tied housing on farms becomes increasingly difficult to obtain.

All of the issues considered in this chapter return repeatedly throughout the thesis. Through the three ethnographies described in this Introduction, I have outlined a picture of the extent and differentiated experience of eviction for farm dwellers. At that moment in time, the failure of ESTA was evident in the extent to which farm dwellers were not aware of it. The authority of farm owners prevailed and a discourse of paternalism is evident even in the process of evicting farm dwellers. In the following chapter I expand on some of these themes by looking at the issues and themes that were pertinent to the research and provide a basis for understanding the ethnography presented in the remainder of the thesis. The research questions that guided research and writing are also presented, and from these I extrapolate the argument that such ethnographies render.

The argument of this thesis is that (neo) paternalistic sociality continues to be renegotiated, rather than challenged, by new laws whose intentions were to challenge inequalities of the old regime. These shifts in sociality are in a fragile state of flux, as farm workers attempt to hold on to the parts of the discourse that offered them security. However, even where these relations continue to hold, insecurity is

increasing for farm workers in myriad ways. Farm workers become liminal at the moment of eviction, as they attempt to negotiate within the limits of paternalism, and at the same time outside of it, via state law and with the application of their human rights and ‘access to justice’ provided by NGOs.

As South Africa’s transition heralded in democracy and a new legal order, the legally plurality inherent also shifted. Differing claims, particularly regarding land, compete in a legal order that has given precedence both to private property rights and land reform. The legal world, with the state on the one hand, and NGOs and paralegals on the other, offers limited justice to farm workers as the law at their disposal is limited in its scope to effectively protect their tenancy rights. Farm workers have access to this world mainly through paralegals, who occupy similar liminal spaces to those they represent. They are active on their behalf, and attempt to educate farm workers, but these actions cannot catch up with the rate of evictions from farms. The legal pluralism at work, I argue, is that of the state, laws and paralegals; and the farm, itself a microcosm of differing rules and laws. As the latter is challenged by the former, though, the protection offered by paternalism is not replaced, but the unequal power biases and dependencies inherent in these relations do continue to inform life for farm workers. On the one hand, paternalism persists in relations of dependency and through new working practices; on the other, attempts at challenging them come from a diluted legal order, and the only real challenges are from non-government organisations that organise farm workers through the moral schemas that farm workers are already familiar with. These new forms of organisation promote a particular type of testimony, to marginalization, that can then be translated into rights. The thesis is concerned with the ways in which the various spheres of influence interact, and with the micro-dynamics of legal and political contestation in the rural Western Cape.

There are two main interrelating fields that describe this situation as legally plural. First, the semi-autonomous ‘state’ of the farm is nested within the state. These two paradigms are not in line with one another, but despite the attempt of state law to curtail the arbitrary power of farmers, the two systems, perhaps unintentionally, continue to coexist. The history of paternalism is one of domestic governance (Rutherford 2001); the apartheid state, through various policies regarding agriculture

and labour, continued to foster the conditions for paternalism on farms. After 1994, and the sea change to democracy, the economic conditions under which these conditions were made workable were opened up to global competition, and an apparently new legal order came into being, one anathema to that which farms were accustomed to dealing with. Due to their remoteness and relative invisibility (farm workers' marginalisation), farm practices continued in much the same ways, whilst working conditions and housing tenure agreements were shifted to accommodate the new conditions. A set of normative quasi legal rules continued to co-exist with the new legal order.

The second field of legal pluralism at work in the South African context is civil society. Civil society, having once been active against the hegemony of a brutal racist state, nowadays shares some of the values of the state. The land rights movement under consideration, including paralegals and NGOs (also the project lawyers at LHR) occupy a paradoxical space, in which they are at once critical of the state, and at the same time they carry out some of its functions. This theme returns in chapters six and seven, where I look at the work and roots of these activists.

The concept of legal pluralism relates to the history of South African law, or the relationship between the state and society which has shifted across various epochs of South African history. In contemporary South Africa, individual human rights (the individual's relation to the state) and group rights intersect, producing a paradoxical situation. According to Comaroff and Comaroff (2003),

the language of legality affords an ostensibly neutral medium for people to make claims on each other and on the state, to enter into contractual relationship, to transact unlike values, and to deal with their conflict. In so doing, it produces an impression of consonance within contrast: the existence of universal standards which. ... facilitate the negotiation of incommensurables across otherwise intransitive borders (2003: 16).

For instance, as considered above, private property rights are given equal value to tenure rights. This situation can be contrasted with legally pluralistic contexts in other analyses (Merry1990; Yngvesson 1993).

South African Society is, according to Comaroff and Comaroff, obsessed with the workings law; it has created a 'fetishism of the law' (2003). This legal fetishism must be seen in the context of South African legal history. Martin Chanock places much of

South African legal culture in the historical context of state making (2001: 24), which was constructed in ‘multiple discursive sites’ (*ibid.*: 25) for contestation and debate through ‘an alliance of patriarchies’ (*ibid.*: 26). For Chanock, South Africa in the early twentieth century was home to a liberal social and legal culture that embodied principles contradictory to those which the state, and later the apartheid state, enshrined. As Abel has demonstrated, the Apartheid State redrew the law to legalise racist policy and cultural apartheid; the law legitimized the state’s power (2003: 1 - 5). However, while an increasingly coercive regime was enforcing this racial order in which African customary law, territorial segregation and the denial of property rights were tools of subjugation, human rights lawyers and NGOs were using liberal visions of law and ideas on African customary rights, such as those that had sculpted South African legal culture, to subvert it.

Nowadays there exists again two alternative visions of law. That of the state, which developed its vision in line with this latter – the Freedom Charter was precisely derived from this liberal and universal discourse of law – but which has diverged from this. Of course, the Constitution, to which individuals can voice their claims and thus their relation to the state, has recognized this vision; but its recognition of property rights, and the state’s subsequent neo-liberal policy framework, produces contestation of incommensurable values. Civil society, at once serving the state by serving a function of the state by promoting the rights embedded in the constitution, are again in a critical position against the state as they attempt to challenge and lobby against laws that reproduce inequality.

## Chapter 1 - Paternalism and Law: Key Issues

This chapter foregrounds the research questions that guide the arguments, also set out in this chapter, made in this thesis. Next it highlights the approach taken to the fieldwork and the methodological and ethical issues that this approach raises. This leads to discussions of legal anthropology, as the approach became ever more focussed on legal pluralism, and a description of legal actors and Acts that my fieldwork involved. Therefore, following a discussion of methodology, I focus on the pluralism of law in South Africa, by describing legal activities and representation of farm workers made by lawyers and rural paralegals, and the competing forms of law that operate in the context of rural South Africa. It is necessary to introduce these here, as a background to the thesis, as their value and importance to the argument and to ethnography in the remainder are crucial.

The Extension of Security of Tenure Act (ESTA) is also introduced. By looking at ESTA, I use it as a lens through which I focus on the problems it has created for NGOs, (such as LHR with its Security of Farm Workers Project), lawyers and paralegals and, of course, for farm dwellers and farmers. The legal pluralism described in this chapter highlights legal professional blindspots, returning the discussion to the limitations and failures of law in addressing the inequalities inherited from apartheid. I look at key sections of the Act and at where the gaps or failures of the law can be seen within it. I outline how the thesis is organised and how each chapter develops the argument that I have discussed in the introduction. Through a discussion of each chapter, I show how the key questions are addressed in this thesis, which I first introduce below. First, and of primary concern, is the issue of paternalism, a concept which lead me into fieldwork, and which underlies the argument. Below, I present a review of literature that drew this concept from examination of historical accounts of life on farms and slavery, and from sociological and anthropological research.



## **(Neo) Paternalism: Anthropology of rural relations in the Western Cape**

My interest in coloured farm workers in the Western Cape was shaped by a reading of Andries du Toit's 'The Fruits of Modernity: Law, Power and Paternalism in the Western Cape' (1997). I was particularly interested in adding to the body of works done in this area in to forge an understanding of 'the limits and possibilities of change' (1997: 149, 2000; Barrientos and Kritzinger 2003; Ewert and du Toit 2005) as embodied in the rural areas of the Western Cape. Discourse on agrarian relations prior to the 1990s was to a great extent shaped by socio-historical studies that focused on 'the ideological and political legacy of eighteenth century Atlantic colonialism in general, and the legal and racial order of colonial slavery in particular' (Du Toit 1997: 161). Such traditions inform how relations between masters and slaves 'described the farm as a family-like community' (ibid.: 161; also ), and led students of South African farming communities to focus on paternalism as not only informing the ways in which farms were 'total institutions', but also 'as a specific way of understanding these relationships' (du Toit 1993: 320). Paternalism refers not only to relations between farm owners and farm workers but also to those within the farm worker community and particularly, between women and men. The antagonism that is played out within the hierarchical social structures and the language used on farms goes beyond the public forum and into the private (du Toit 1993). It cuts across these boundaries; it begs the question of whether these boundaries even ever existed on farms, and, if they did or do, how the power relations have been played out within, as well as across them.

The persistence and reinvention of racialised paternalism on farms is described by du Toit as ceaseless despite the fruit and wine industries being among the Western Cape's 'most 'modernized' sectors...:

The history of paternalism is a history, not of its disappearance, but of its ceaseless return, in re-invented, reconstituted forms, to the white farmlands of the rural Western Cape. Even in the mid-1990's one could find still in place on farm after farm, the discourses and practices that constructed the farm as an organic family-like community, presided over by a patriarchal master, and tied together by ties more intimate and obligations more inclusive than those found in urban industry. To work on a farm is not merely to be in an employer-employee relationship; but

to become part of a community, indeed, *deel van die plaas* (part of the farm) (1993: 320).

The discourse of paternalism describes not only a ‘dependence and vulnerability’ of farm workers’ relations to farmers, but also an antagonism which is inherent in the competition to attract the attention or ‘understanding with’ the benevolent ‘father’s’ favour that redefines itself in further envy and amongst farm workers, resulting in a vicious circle of informant activities (du Toit 1993).

Such relationships have often meant that many farm dwellers have spent their lives moving from farm to farm. The lives of women in particular have been vulnerable and are often characterized by violence (domestic violence is one of the most prevalent of social problems on wine farms). One informant had worked in Cape Town, and when she returned to live in Grabouw so that she could have help with her children from her family there, she met a man and automatically through him she had access to housing for herself and her children, on farms. Her life from then on, however, was characterized by movement (‘my husband never worked on one farm for long’) and abuse, as well as a relationship that was unstable and insecure. She and her children were vulnerable because of domestic violence, and in one story she told me it was the farmer who had intervened in the situation (see Chapter two).

As relics of slavery, how were these relations reformulated in the more recent ‘modernizing’ past? How did they, on the one hand, represent, as a social metaphor, the historical changes of apartheid law; and how, on the other hand, did they form part of the wider racist project, being reformulated *according* to apartheid laws? The farm owner and apartheid labour laws protected coloured workers, who historically formed the core workforce of permanent workers who lived on the farm in tied housing. Under apartheid laws, coloured people were granted an intermediate status within the racial categorisation and hierarchy that underpinned all apartheid legislation. This was given legal recognition in the Labour Preference Act and was further established with the Group Areas Act: coloured workers were given occupational tied housing (granted by government subsidies as part of a piecemeal social upliftment strategy) and jobs on farms whilst black Africans were denied such privileges and forcibly removed from farms to designated ‘group areas’. The Labour Preference Act was designed to ‘engineer the exclusion of black residents from non-

bantustan areas ...[and thereby] to remove 'foreign' blacks, freeze the number of black families in [a given] area, restrict the influx of black migrant workers and replace black migrants with coloured labour (SPP 1983)' (James and Ngcobo 1997: 122). James and Ngcobo further note that it was 'the coloured Labour Preference Policy, which has resulted in the predominantly coloured labour force, [that] has ensured that the majority of people displaced from farms in recent years have been coloured' (op cit). These relations, as well as the laws from which they were derived, effected an exclusion of Black African workers from the rural economy of the Western Cape. For many years it was only these black male migrants who were employed on a contractual seasonal basis, and housed in barrack style hostels.

Du Toit (1993, 1997) describes paternalism as creating a 'total institution', with the farm being the family. He argues that these kinds of relationships necessarily mean that the rules of the farm were always adhered to through antagonism, fear, and envy that cut across all the relations on a farm (see also Sylvain 2001; Waldman 1996). For this reason, as one of my informants described farm life, 'those who were in, were in, and those who were out, were out' (Fieldnotes). This does not mean that those workers who looked out for the interests of the farm and were 'seen' by the farmer necessarily had particularly close relations with him. Instead, through constantly shifting relations, antagonism was always round the corner, further articulating the paternal quality of farm relations (du Toit 1993), and subjugating farm dwellers by putting them in the position of children.

Deep seated paternalism on farms changed somewhat in the 1980s when modernization became the dominant discourse in agricultural practice, as encouraged by the newly developed Rural Foundation as well as farmer co-operatives. Farmers were to be managers, rather than fathers, and workers were, in some cases, even given consultative power. However, patriarchal narratives of struggle and antagonism continued albeit in divergent forms (du Toit 1993), and 'at the most, [paternalism] tried to redefine itself, whilst leaving the underlying power relations untouched...:

Overall, the RF became the major force in shifting relations on the farm from a despotic to a consultative version of paternalism (Ewert and Hamman, 1999: 208).

Reform on farms took as its ideal modern managerial structures, but failed to fully reform relations of authority, mainly due to a continuation of the ideal of the farm community as a family (du Toit 1993); the coloured farm worker was still ultimately seen as a child. Ewert and Hamman (1999; 1996) refer to the new forms of relations as on farms as 'neo-paternalism'. Modernization of farms and managerial and market orientated approaches 'restructure[d] many of the central relationships that exist on the farm, and challenge[d] some of the fundamental assumptions of paternalism' (Du Toit, 1993: 327), thus '*re-articulating*' paternalism (op cit., emphasis in original).

The many labour laws that have been introduced in the past ten years have had at their roots the aim to redress such racial inequalities of the past, in order to promote a sort of colour blindness in the employment of workers and in ensuing relations. However, though the premise of these laws is that of promoting equity in the work place, they could not, as laws, anticipate the complexities of shifting relations, and the hold that the discourse of paternalism has on Western Cape wine and fruit farms. The impact has thus far left all parties dissatisfied.

In their discussion of labour organisation in Western Cape agriculture, Ewart and Hamman (1996) argue that neo-paternalist relations on farms in the 1990s were characterized by a fragile ethnic alliance between permanent coloured farm workers and white farmers due to a very high number of African seasonal workers now living in rural towns, with some coloured workers taking up permanent as well as managerial positions on farms. In some ways, they argue, racial tension between coloured and black farm workers has emphasized the deep seated historic relations between the core coloured permanent work force and the farmer. Though they originally argued that 'paternalist relations have all but disappeared in the wake of a decade or more of rural modernisation' (1996: 162), this has been contested (du Toit 1993, 1997) and this outlook was revised in the light of Du Toit's ethnographic claims (see Ewert and du Toit 2005). Other factors, including the possibility of unionization and the casualization of the core permanent workforce, have left relations on farms perhaps even more conflictual than in the past. A more thorough analysis of relations on farms show that the possibility of unionization and the larger pool of seasonal workers are actually part of a process of reaction to the various changes to and extensions of labour and tenure legislation made since

democratization, as well as globalization and shifts in management techniques. Again, paternalism has survived such changes, though as shall be seen, farm workers are beginning to relate to farmers through more formal, legal procedures. To some extent, they may be changing their own terms of reference, using the language of rights to promote, for example, better living conditions (see Chapter Five). For the most part, though, they still submit to the authority of the farmer, and further, in legal negotiation, they might often continue in these kinds of relations.

Orton et al. (2001) argue that ESTA, the law considered in this thesis, throws light on the contradictions inherent in paternalistic relations, as when tenure is protected, paternalism persists. This is key to the argument of this thesis, as set out below. Orton et al. offer perhaps a more current picture of neo-paternalism:

It is the balance of [paternalistic] sentiments of control and protection, co-existing with a new discourse of rights and security, which characterizes the neo-paternalist relationship (2001: 474).

It is the premise of paternalism at once characterizing and describing farm relations that formed the basis of my research proposal, and from Orton et al's understanding that I begin to analyze them. Relations on farms are renowned for being paternalistic (Sylvain 2001; Du Toit 1997) and women tend to be vulnerable to both domestic violence and to the effects of labour laws and occupancy being related to male labour, leading women to be more insecure than men on several levels. Permanent coloured male workers, on being hired, have traditionally been provided with tied housing for themselves and their families. Whether this was written in a contract or verbally agreed, it was made between the senior male farm worker and the farmer. On retrenchment of the male farm worker, the verbal or written contract for the house as tied to the job was broken, at least until 1997 and the introduction of the law considered in this thesis, and the entire family would have to move, as the woman's continued employment and housing depended on her partner's. In each life history that I conducted, movement from farm to farm would be preceded by a quarrel or a fight with either the farmer or the foreman. For example, Anna Willemse, a farm dweller on Primrose farm, described moving from farm to farm as a child:

My parents both worked on a farm in Sir Lowry's Pass. I went to school there. When I was 12 or 13 we moved to Fyn farms in Grabouw. On Fyn

farms my father had a quarrel with the farmer so we moved back to a small farm in Sir Lowry's Pass (April, 2003 fieldnotes).

Later in the interview she described a 'family fight' on another farm when she was 18, after which the farmer had asked the family to leave. Years later, she moved to another farm with her partner, and an alcohol fuelled fight that he got into on Christmas night resulted in them having to leave that farm. In each life history, almost without exception, families moved from farm to farm when the farmer asked them to leave due to disagreement between the male farm worker and either the farmer, foreman or another farm worker, or because of domestic violence (see chapter 2).

By gathering life histories and interviews from farm dwellers and ex-farm dwellers I was able to focus on the sorts of relations on and off farms and the ways in which men and women used or did not use the local resources available to get help; I wanted to see if, and in what ways, relationships on farms were being transformed by a recourse to the law. How did these more legally defined relationships differ from those defined by the old 'understandings' that were more often made verbally between the farmer and the worker (du Toit 1993)? In many cases it was through social networking that farm workers came to hear about individuals or organisations that could help them. Many different social networks acted as sites where people learnt of many different forms of help that they could call upon.

Due to their position on rural farms and the changes in attitudes of farm owners, through series of interventions (or lack thereof) by the farmer, I argue that forms and patterns of neo-paternalism have shifted again and relations between farmers and workers are tense with paternalism, or neo-paternalism. Such relations are still very much entrenched, if somewhat transformed. Such is the response of the farm owners to changes in the law that they themselves feel fundamentally aggrieved, under pressure from the double effects of land reform policies and shifts in the global market. Farmers have been defensively protecting their interests and their responses can be seen, at various points, to be anticipatory as well as reactionary, many fearing that reforms bring South African agriculture one step closer to Zimbabwean style land invasions. As one farmer commented to me, 'What about our rights? What

about the rights of farmers? This country is getting like Zimbabwe'. Indeed, this feeling is not totally based on paranoia, as Kariuki suggests:

The Bredell land invasion helped to re-animate the debate about the land issues in South Africa within the national polity and in the context of Zimbabwe's crisis. The problems afflicting rural South Africa with respect to land issues - human rights violations of labour tenants, farmworkers, have rarely captured the imagination of a nation, in the same way the invasion at Bredell, or the land seizures in Zimbabwe did. In fact for the first time since the 1994 democratic elections, land and land reform has been the subject of sustained media interest and public comment in South Africa, and the reactions of various interest groups in South Africa have been most revealing (Kariuki 2004b: 25).

Such observation is notable. In 2005 there has been renewed media interest in land debates to an extent unprecedented in the years prior in spite of well reported land eviction cases. During my fieldwork, however, activities were heightening. These included the SAHRC inquiry into human rights in farming communities (see Chapter Nine), government interest in civil society voices on land reform<sup>13</sup>, 2002 Human Rights Day being dedicated to inaugurating the coming 'year of the rights of farm workers', Sectoral Determination in agriculture (in 2003), and COSATU's call for an agricultural 'code of practice', to name but a few of the national activities taking place during this period. The interest groups Kariuki cites (from across South Africa) all called on the government to accelerate the land reform programme in order to prevent Zimbabwean style land invasions; this included various land rights organisations as well as Agri-SA (see Chapters six and eight).

One of the themes that the examples in the introduction display is the manner in which farmers use paternal authority in order to cut ties with farm dwellers. The irony is not lost on either commentators and activists, or farm workers themselves. There is a current trend to cut the permanent work force down to a minimum, and most commentators I spoke to agreed that the motivation of farmers to retrench large numbers of permanent workers is towards evicting them from on farm housing. They see ESTA, that aims to protect tenure rights of farm dwellers, as conducive to long

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<sup>13</sup> A meeting that is not described ethnographically in this thesis is one organised by the Department of Land Affairs for all civil society activists and interest groups to sound out their views on potential ways forward for land reform. A conservative target had been set for 15% of land owned by white farmers to be transferred to non-white farmers by 2015 through legal land claims and land willing buyer willing seller policies.

term permanent tenureship by farm dwellers who have worked on the farm for many years, so they are in effect eliminating the chances of farm workers working and living on farms for long enough to be guaranteed permanent occupier ship, which would appear to explain the significant rise in evictions since the law was passed in parliament. I was told that permanent workers were being replaced by contract labourers, workers not living on farms and working on a contract basis from season to season.

As farm work becomes more focussed on seasonal and casualized work, interaction between farmers and workers is increasingly done through a third party, the contractor. It may be argued that in many respects this does not undermine paternalism, it only adds an extra dimension, and frees up the farmer from having to handle complaints, giving him more time to organize and retrain a core of permanent labour. Since many permanent female workers still rely on husbands and fathers for work on farms neo-paternalism is overtly still gendered, as well as racialized, and in place. But the contract allows women to independently gain employment and in signing a contract they are independently remunerated as well:

Off-farm employment represents a possibility for undermining paternalistic labour relations, and of gendered dependencies in particular (Orton et al. 2001: 476).

However, having been traditionally employed as seasonal labourers on farms, women are still employed into these jobs by contractors, if not increasingly so. Due to the high numbers of evictions, and thus the incidence of farmers employing larger numbers of off-farm contract labourers, contractors seek out experienced workers who have in the past been employed as core permanent labourers, and who thus have experience in some of the more skilled operations that take place during the off-season, such as pruning and spraying pesticides. Women tend to be employed during high season for picking and packing. Women formerly constituted a reserve of on farm labour for high season, but nowadays their position is less secure, as they are competing with the large numbers of women migrating to centres such as Grabouw and Stellevosch and seeking contract, seasonal work. Additionally, because they were part-time, seasonal workers, the wages for these jobs had not been standardised



to the minimum wage<sup>14</sup> that had been legislated for permanent workers by the sectoral determination of 2003.

As well as contractors, there are other third parties involved when ties are cut between farmers and workers, and these actors are central to the thesis – lawyers and more specifically, paralegals, who are involved at the point of the fracturing of former employer-employee and landlord-tenant relations – as is also the law itself. One of the central arguments of this thesis is that when the law is brought into play the power dynamics inherent in paternalism are not only maintained, but are reproduced along new lines.

The focus of this thesis is on the interplay between academic analysis and organized labour/ legal activism that has led to use of the concept of paternalism as an analytic concept to describe historical relations on farms and how they are structured. The thesis therefore sees paternalism as a concept that can be seen, first, in the culture of life on farms (as described from Chapters two - four) when farm workers still live in tied housing. Farmers' unions strongly deny that paternalism exists, using the argument that so much has changed in the management of farms. However, this would seem to be a defensive move on the part of farmers in the face of criticism of management reforms: it is alleged that they merely rearticulated paternalistic practices and further entrenched them, as cited in the discussion above.

The second way of seeing paternalism is as an academic and activist concept used to critique historical practice that has survived on farms because of continued white ownership. Such criticism is levelled at the government for its slow pace of land reform, and at laws that have undermined rights to autonomous land use for non-whites, and have disempowered non-whites who do not have skills and experience in commercial agriculture.<sup>15</sup> Academic description and discussion, and activism, are not easily separate, as the former inform the latter. From Chapter Six onwards I focus on the kinds of activism at work, the ways that farm workers are represented legally,

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<sup>14</sup> At the time of research.

<sup>15</sup> Even when land is appropriated for non-white farmers, it is divided into too small plots; many new farmers do not succeed because of lack of experience, and peasant farming cannot compete with large scale commercial agriculture. It has been reported that a handful of farmers have offered both land and assistance to black commercial farming in setting up, but this is not the norm and at the time of submission, tensions and murders are being reported in the press frequently.

and the Extension of Security of Tenure Act (how this is being manoeuvred on behalf of farm workers; the failures and gaps it has shown).<sup>16</sup> The second part of the thesis focuses on farms and farm workers from an activist point of view, whereas the first part views farm relations and paternalism from the point of view of farm workers. Chapter five pivots the two, analysing the ways in which activism, through testimonies, has been attempting to use old forms of sociality to generate solidarity among farm workers and dwellers. It sees paternalism from an alternative point of view, drawing on the concept of marginalisation as a platform addressing not only paternalism and its negative effects, but also the failure of the state to be more inclusive of farm workers. The idea of marginalisation, a mobilising concept, effects change from farm workers themselves, ultimately forging a new kind of activist from within.

Paternalism is thus multidimensional, on one level it is metaphor and an analytic device, whereas on another it is real, it can be described and its effects are ubiquitous for farm workers (chapters 2-4). It also has a double life, as it is translated in grass roots vocabulary to marginalisation, which encompasses much more than paternalism and resonates with Rutherford's discussion of 'domestic government', which refers to influence on government as well as farm culture.

## **Key Research Questions**

The broad theoretical question that informed the research to begin with was to what extent has the language of human rights been useful to promoting a united and non-racialised South Africa and to what extent is this outcome possible? In order to answer this question, I proposed to look at how the official discourse of human rights was being translated 'on the ground' to those living in farming communities. The success of a democracy based on non-racism and human rights is seen in the extent to which racism and apartheid still exist: or, the extent to which they are still experienced and lived in everyday life. For the purposes of this thesis and in terms of reality on farms, it is the persistence of paternalism on farms that represents the legacy of apartheid, and the extent to which laws and legal action in forms of

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<sup>16</sup> See chapter one for more thorough outline of each chapter and the way each contribute to the argument.

representation have attempted to transform relations inherent in paternalism. I proposed to look at the ways in which the power structures inherent from apartheid continued and the racist forms they still took. I wanted to explore how legal rhetoric in the language of human rights was addressing those power disparities, and to what extent they were limited in their scope to actually address the ‘tenacity and magnitude’ (Seepe 2001<sup>17</sup>) of racism.

On arriving in South Africa I discovered that the main project of LHR Stellenbosch was to work on ESTA cases that addressed evictions of workers from farms. The rate of evictions was so high and knowledge of this law among farmers and farm dwellers so scant that evictions came to occupy my attention. As highlighted above, relations on farms had been described as neo-paternalistic by other anthropologists and sociologists; lawyers working on the Security of Farm Workers Project (SFP) at LHR proposed that farm workers were ‘marginalised’; so I set out to see the extent to which paternalism on farms was present, how and why farm workers were ‘marginalised’, and whether this law and the actions it provoked were transforming relations on farms.

The questions that guide this thesis address the plurality of law in rural South Africa, and moments of eviction. By inquiring into moments of eviction, I wanted to assess extent to which people did or did not have access to legal resources, either in advice from paralegals or access to NGOs such as LHR, which often governed the ways in which they were evicted. The research described and the resulting ethnography looks at moments of eviction where farm workers, farmers, lawyers, are brought together. Alternatively it examines incidents in which the law is not involved and farm workers have faced eviction without knowledge of a law that might protect their security of tenure. It further examines a juncture where there is potential for formerly ‘paternalistic’ relations to *become* legal ones. From here, then, the following questions guide the analysis of ethnography provided in this thesis:

*Do these moments (of eviction) translate paternalistic relations into legal relations?*

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<sup>17</sup> Sipho Seepe (23 February 2001) ‘No Blows Barred: Too Hasty a Farewell to Racism’ in The South African Mail & Guardian <http://www.mg.co.za/mg/za/features/seepe/010223-seepe.html>

*What do these moments highlight or imply about the nature of law and forms of legality in South Africa during the time of 'transition to democracy'?*

These are the key questions that the thesis addresses. They arise out of the fieldwork that I carried out, which is discussed below together with the key themes that emerge from this and which frame the rest of the thesis.

## **Field Methods and Ethical Considerations**

I began fieldwork as an intern at the LHR Stellenbosch office in March 2002 and worked there for 7 months, after which the office asked me to stay for another 6 weeks to write a project proposal for a new HIV AIDS project. Following this period I resumed research but changed sites moving to Grabouw in the Overberg region of the Western Cape, a deciduous fruit producing area with apples as a major crop. In contrast to Stellenbosch, which is a hub of legal rural NGOs, Grabouw possessed only one legal advice office which was often closed due to funding difficulties. My aim was to work with farm workers who might have had less access to legal resources than the farm workers I encountered through LHR in Stellenbosch. This had been a priority for me prior to field work, since one potential ethical problem had been that farm workers might associate with me with the NGO, as having the same agenda. I interviewed farm workers that had contact with LHR, but my move to Grabouw also guaranteed to introduce me to farm workers who had not had prior contact with this organisation. One of the considerations I make later in this section, however, regards how access to these farm workers in Grabouw came to be through paralegals. This itself poses its own ethical dilemmas, but as shall be seen, I took this as a point of departure, looking at the agendas of paralegals and farm workers and how they compared and contrasted. Further, I had to consider how farm workers viewed me – as activist, as paralegal, or as independent observer?

I set out not only to study an NGO and its practices, but also to look at varying agendas of all actors involved in the NGO's projects. Below, I describe the projects of LHR that I studied, and look at issues of access, in terms of access to those to which the projects were aimed, i.e. farm workers and paralegals. Political agendas were paramount, and I was to be in the potentially awkward position of accounting for those of all the actors involved in the project. I tackled this by using the

anthropological tool of taking each agenda in its own right, or, as Ferguson might have it, to 'demote the plans and intentions of even the most powerful interests to the status of an interesting problem, one level among many others' (1994: 17). In other words, I set out to see how each actor's interests fitted in with those of others. This included the relation between the interests and foci of LHR and paralegals, of farm workers and farmers, and of the government. As Markowitz (2001) points out, organizational practices and projects may have 'a range of agendas' and are 'subject to shifts within larger systems of power' (2001: 44).

There are 12 LHR offices in South Africa, with a head office in Pretoria. There are many projects, and each office houses various national projects as well as locally relevant ones. For instance, the Refugee Rights Project operates from the Johannesburg office, but the Human Rights Education Project is a national project because it addresses general constitutional education rather than specific regional issues; its director or implementer is based in Pretoria, but each regional office has an administrator for this project. The two main (LHR) projects operating from the Stellenbosch office when I arrived were the Security of Farm Workers Project (SFP), which advised, litigated and disseminated information such as relevant judgements (in the form of quarterly newsletters) on ESTA matters; and the paralegal training project (PLTP). A third project was also based in the office, the Overberg Access to Justice Pilot Project. The implementer of this project, Walter (who later became my research assistant in Grabouw) was employed by the National Paralegal Institute (NPI), and the project was joint funded by Danish human rights organization, DANIDA, and by LHR.

There were two lawyers on the SFP, the project co-ordinator and the project implementer. Although ESTA cases are very much associated with labour disputes (people tend to be evicted from houses following retrenchment) the project only had a remit to deal with ESTA cases, and would refer other types of case either to the Commission for Conciliation, Mediation and Arbitration (CCMA), the Legal Aid Board, or the Law Clinic at University of Cape Town. This point must not be underestimated in relation to the remainder of the thesis and the overall argument; one of the problems highlighted by all actors working on evictions was that there was a distinct lack of coherence between the implementation of various labour laws

relating to farm workers and with ESTA – I will return to this point later in the chapter when I look at the ways in which ESTA fails to protect farm workers, and again at the end of the chapter where I set out the overall argument of the thesis. Many matters that didn't relate to ESTA were referred to Walter, the resident paralegal. Paralegals would also call the office for advice on ESTA matters or to refer ESTA cases. This made Walter's 'Access to Justice Project seem timely, as it was to link up advice offices with centralised NGOs and justice centres.

The Paralegal Training Project, like the Human Rights Education Project, is co-ordinated nationally but implemented in all regional offices. When I arrived the office manager (Ingrid) was co-ordinating the regional PLTP and when she left, the office secretary was given the responsibility of administering local (regional) training workshops (though there was no implementer at the office at this point). The former had been a paralegal herself, whereas the latter was an administrator. Involved as I was with all aspects of the work of the office, I was able to follow closely the activities of the PLTP (though the work thereof was not as quotidian as the SFP's). The PLTP hosted regional accredited training workshops for paralegals, whose experience of laws often came on the job. Training often focussed on blind spots of paralegal knowledge, and therefore were sometimes ad hoc workshops, addressing various laws and how paralegals could work on them on behalf of their clients. These workshops gave useful insight into the political agendas of paralegals. It provided me with context, of paralegals' backgrounds, their political concerns, how they questioned the workings of laws and what these blind spots were.

On my first day Ingrid lent me project literature for each project in the office and I concluded on reading about each that I should look at the activities of all of them, perhaps with a little more of an emphasis on the SFP. As well as co-ordinating the Paralegal Training Project and managing the office, Ingrid also assisted Walter in coordinating the Overberg Access to Justice Pilot Project. This project was partly the brainchild of Walter and other paralegals in the Overberg region;<sup>18</sup> its remit was to offer *pro bono* legal advice to the rural poor and to establish a justice centre with

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<sup>18</sup> Literally meaning 'over the mountain', the Overberg is a region east of Cape Town to the other side of Sir Lowry's Pass. Caledon is its sub-regional and municipal capital, with rural centres such as Grabouw, Villiersdorp, Bredasdorp and Riviersonderend.

attorneys and candidate attorneys ‘of colour’<sup>19</sup> and paralegals, which would be the centre of a support network of rural advice offices – overall this network system was called a ‘cluster’, a model that was later used to describe the relation between LHR's West Coast Law Clinic and the surrounding rural advice offices. The justice centre in Caledon (see map, p iv), with its resident lawyers and paralegals, would eventually be a permanent centre point to which rural advice offices in this sub-region could refer for information, legal support and for free litigation services for their clients. It was much like the university law clinics in Cape Town, except that it was based in a rural town, Caledon, and the already existing rural advice offices in the area would be satellite services; enabling easier access to free litigation as well as bolstering existing legal advice for the rural poor. Rural paralegals could refer cases or phone for advice on particular laws and would also get support on maintaining the provision of their services.

This project was a pilot, and with funding it was hoped that it could be replicated in other regions, with law centres being opened in other rural towns that would operate as central reference points to rural advice offices (paralegals). At the time of research, paralegals in the rural advice offices that were part of this cluster were already using this system, but sometimes referred clients that had ESTA cases, for example, to the SFP at the Stellenbosch LHR office, because the project specialized in ESTA. It seemed that the project was implementing a practice, or form of knowledge sharing, that was already unofficially in place. But it put paralegals on a map where they could connect with one another or with less remote justice centres. The new office in Caledon, for instance, meant that paralegals in Swellendam (see map, p iv) could refer people to Caledon, just a few kilometers away, rather than Stellenbosch (60 km away) for litigation services. This project lost its funding from DANIDA and its co-ordinator, Walter, lost his job. It had been during the process of gaining trust and NPO status that funding had been cut, because LHR and the NPI failed to fulfil certain administrative requirements that DANIDA expected. In particular, the two organisations had failed to agree on the division of tasks and

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<sup>19</sup> As Walter put it on our first meeting, this was because candidate attorneys ‘of colour’, that is black or of mixed descent, still had need for access to more law firms in order to do their candidate year, as traditionally white law firms still did not take on so many candidate attorneys from these former racial categories. It was interesting, however, that an unintended consequence of this was to encourage specifically black and coloured lawyers into human rights or *pro bono* (free) legal work.

responsibilities. The Justice Centre in Caledon became a Legal Aid board justice centre by the end of my fieldwork. In terms of services, there would probably be few differences between the two organisations, but for Walter and other paralegals and attorneys that had been on board, the Legal Aid Board is thought of as untrustworthy. There is a political concern at work here; the lack of trust, I came to understand, was related to lack of trust in general for government departments and their coherence. It also related to rural paralegals' roots. I return to this issue in Chapter seven, where I focus on paralegals. It gives us some idea though, at this stage, of the range of political agendas that I noted above. These concern those of remote, rurally based paralegals, farm workers, the government, and funders.

All of these projects were, in many respects, simultaneously linked to the rights of farm dwellers and to paralegal activities. For example, the SFP was often asked to participate in PLTP training workshops to explain the complicated ESTA law and more recent developments and cases to the paralegals working daily with farm workers threatened with eviction. Again, this provided me with a rich source of information, particularly on how newer paralegals were working, and what their motivations were. I asked whether they were politically motivated, like older paralegals who had started the movement out of concern for neighbours and friends who were being forcibly removed during apartheid. Or were their concerns more material, and career oriented?

I spent the months at LHR following the work of all these projects. I was not always able to sit in on all client attorney meetings in the SFP, and none of the cases actually went to court while I was there (most were postponed). Nevertheless, in addition to doing a lot of general administration, I visited farms where farm workers lived with whom the SFP were working, and attended court to sit in on meetings with the magistrate and the farm owner's lawyer, during which there were negotiations about when proceedings would recommence. I was also sent to meetings to represent the project which gave me access to the wider and prolific rural activist movement, where I encountered unions and other NGOs, such as the Women on Farms Project, and their efforts to collaborate in the name of farm workers' and dwellers' human



rights. My work varied, and included writing reports for *die Okkupeerder*<sup>20</sup>, taking minutes at meetings, and driving farm dwellers to the police station to sign affidavits. I was also sent to the Human Rights Commission Hearings in Malmesbury; I went on WFP marches, in Stellenbosch (on Women's day), and in Grabouw (lobbying for a minimum wage for seasonal farm workers). Where court hearings were lacking<sup>21</sup>, I had an almost unlimited access to the projects' stakeholders, and to other NGO's and projects as well as to documents, which were another rich source for research.

I helped Walter with administration for the Overberg Access to Justice Project, which involved typing up reports, funding applications and log frames. I also accompanied him and Ingrid on a trip to the justice centre and some of the advice offices in the Overberg to assess the progress of the project. On that occasion there was a lengthy negotiation in Bredasdorp (temporary) advice office, between Walter, the paralegal and the Church board to which the advice office paid its rent. This was a three-hour meeting in which Walter and Ingrid persuaded the board to allow the advice office access back to the premises and an agreement was negotiated over how the rent was to be paid in future. This was my introduction to the insecurity which paralegals faced in their work. The Access to Justice Project had been set up in order to provide links for rurally based advice offices, and support such as that described above. When the project disintegrated, rural paralegals were yet again operating without such support. In the time I was there, Walter continued to pursue the funding to restart the project, but without the financial backing of the larger service organisations, his efforts were in vain.

My involvement in these projects and their activities introduced me not only to ESTA law and its intricacies, but also to the range of legal actors involved in representing farm workers, and ways these actors and organisations collaborated with one another to this end. This proved invaluable in the next stage of research, when I intended the focus to be on farm workers in a more remote town in which less legal activism was in evidence. I would focus on life histories as well as farm workers' interaction with law: their legal consciousness. I had also been introduced, through these projects, to some of these rural towns and hamlets.

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<sup>20</sup> The quarterly newsletter of the SFP.

<sup>21</sup> I return to this in my analysis of ESTA, below.

I got on very well with Walter, my former colleague, who lived in Grabouw and was now unemployed. I knew he had plenty of contacts. I invited him to work for me as my research assistant, especially since my Afrikaans was still limited. My subsequent fieldwork lacked the structure it had had at the office. Walter and I first drew on his contacts, since he had formerly been a paralegal in the town, and went to interview a few of his former clients. Having discussed the questions that guided the research, and some of the findings from my previous research at LHR, we decided to continue to focus on ESTA. I also wanted to observe the kinds of interactions that occurred between paralegals and their clients. When we visited the local paralegal, Raymondt Barties in his office, he confirmed that the majority of his work concerned evictions. He gave us details of his ESTA case work and also told us of other sorts of work he was involved with in the area. We also met former farm dwellers in the waiting room of his office and they were happy to be involved in the research too.

About half of my time was spent on farms, where we established relationships with farm dwellers who were under threat of eviction. We also visited other farms where we got to know people who were not threatened with eviction, but where we did life history interviews and found out a lot about local history and about the context of life on farms for these people. We usually came home about twice a week with a huge bag of apples each that farm workers had given us. We visited informal and RDP settlements, interviewing and getting to know people who had been evicted, people who had left farms of their own volition and a lot of seasonal farm workers who worked for contractors or who were regularly employed on particular farms in the picking season. We maintained a lot of contact with Raymondt and met up with him often to exchange progress reports and to discuss ongoing case work. We also visited other rural advice offices occasionally, since Walter did not want to lose his links to his former project, and still had in mind sending out funding proposals and re-establishing the Overberg Access to Justice Project.

At the end of my time in Grabouw we found out that the Women on Farms Project NGO had established field workers in Grabouw and were proposing working there. Walter knew one of the women involved so we interviewed her together. Through this relationship we were invited to one of the meetings on a farm which I describe in

Chapter Five. We also recorded the songs written for the rallies and marches organised by the Women on Farms project.

With farm workers living on and off farms, I conducted life history interviews, and through these, important themes introduced themselves. In addition, and because the aim of research was to establish how successfully human rights were being translated to farm workers, we also talked to them about legal or other means by which they approached problems such as labour disputes or threatened evictions. The two lines of inquiry - life histories, and investigation of people's legal awareness - produced interesting dialogues, some of which converged. For instance, in cases where workers were being threatened with eviction, I would note how Walter asked specific questions about events that had led up to the threat of eviction, or how long they had lived on the farm, whereas I attempted to gather as much information as possible about how and where they had grown up, and the changes they had witnessed. The forms that Walter's line of questioning took, then, replicated the legal interview to an extent. As a former paralegal he was eager to help these farm workers, to discover details that had been missed by the local paralegal but that might help their case, or help them with other, related problems. Walter consistently attempted to help our informants, and people began phoning me to ask for help as though as a unit we were a mobile advice clinic. In this way I observed the dynamics of a paralegal at work, and by associating with other paralegals, I observed in depth the variety, insecurity of the work, and the ways they manoeuvred local, as well as legal, knowledge.

Walter and I began to be viewed as a quasi-legal team. Here was an English speaking academic who could drive to farms with a paralegal. Much of the time, we were not seen as a mobile law clinic. People would talk to us about what had been happening day-to-day, and what kind of interactions they had had with the farmer or with other farmers. At times, when these interactions were related to a case (for example, on Primrose farm), farm workers would approach us with pertinent information. At others, when matters were of a much more mundane nature, they would have little to say to us. At these times, I would ask them about family and about friends, about details that I may not have garnered in previous interviews and conversations, and we would talk about people that we knew in common, gossip acting as a kind of social glue in our interactions. For the most part, I would garner details on day-to-

day routines, and ask for more details on some incident I had been told about in life history interviews. As a way of managing the less legally revealing moments in our social interactions, this proved to add more depth to some of the inquiries I had previously made. As many of the key informants were older women, I made attempts to get to know them more personally by offering lifts to the health centre, or to visit friends and relatives on other farms. In all, much of the qualitative research that was eventually analysed was just a small part of the larger contextual day to day research, in which efforts to engage with and get to know farm workers took up much of the time. In order to contrast the more legally minded interviews, we also conducted interviews with farm workers living both on and off farms, who had no current dealings with law. These provided wider context, and the problem of my position was clearer.

Life histories offer alternative narratives to those of normative legal understandings in conventional legal discourse (Griffiths 2002: 160). One of the advantages that life history - or biographical - interviews offered me was to contextualise farm workers' current experiences - of life on farms, of evictions, and of legal consciousness – with their experience of these throughout their lives. I particularly did not wish to assume that life on farms or the experience of eviction was dramatically different now to how it had during the apartheid era. Further, the life history offered not only the individual's story, but those of their close relatives. For example, a farm worker might tell me how their parents had come to arrive on (or leave) a particular farm or area. Further, and instrumentally, as Griffiths has argued the life history highlights voices that might not be 'heard' or given resonance through other means, and that shed light on, in particular, 'the conditions under which people find themselves silenced or unable to negotiate with other in terms of day-to-day social life' (ibid: 161). But as well as the difficult times, these interviews and conversations provided me with information of what farm life was like when at times when there was no conflict, and how though certain farmers were difficult to work for, others displayed more of the benevolent side of paternalism to their workers. To these ends with farm workers, life history interviewing was invaluable as a methodological tool.

The collection of life history interviews, in-depth interviews and the observation of legal style interviews during the second phase of the research contrasted with the

somewhat more formal observation of meetings and interviews at LHR and my participation in wider movement meetings. These arenas offered an insight into what changes the wider movement were seeking to effect. Legal interviews at LHR afforded a glimpse at the intricacies and social life of the ESTA law. And observation of training was interesting as it also gave me a chance to get to grips with the mechanics of this law – how it was to be dealt with everyday, and the terms in which it was communicated and taught. The second phase of research provided the social context of all of this. I could see how paralegals put such training into practice; to what extent wider movement concerns were the concerns of farm workers themselves; and how farm workers dealt with evictions when they did not have access or awareness of these legal forums.

When I moved onto this second stage of the research, I was faced with the option of living on or off a farm. Since I was not only interviewing farm workers who lived on farms, it did not seem practical to stay on a farm. To this end, then, I stayed with a family who lived next to one informal settlement where many seasonal farm workers lived. To offset this decision I decided to stay on a farm for a few days with some friends of Walters. There I got to know some farm workers and stayed in contact with them. The implication of not living on the farm for a more substantial amount of time was that I would not get to directly experience the social life of the farm. There were occasions to visit farms in the evenings, and through this, and the weekend spent on the farm, I got to know what social life on farms was like.

By interacting with farm workers in these ways, I had opportunities to socialise without Walter, my paralegal assistant, and to do participant observation and interviewing without so much legal scrutiny. In the main, however, access was gained to farm workers through his knowledge, or through Raymond, the local paralegal, or through the SFP and other paralegals. This point of access had important implications for the research; almost all of the farm workers I talked to and interviewed had some kind of legal problem, and had already approached a paralegal for assistance. However, some of the farm workers Walter put me in contact with had never had much contact with paralegals, and had certainly never gone through legal proceedings, or received legal advice. With these informants, we conducted life history interviews, with Walter assuming solely the role of interpreter. In some cases,

particularly with farm workers living in informal settlements, our approach had been made, as it were, cold. In other words, we toured informal settlements asking people who were there whether they were working, or had ever worked, on farms. With those that answered positively, we had informal conversations, and with some, more structured interviewed. As our focus was to be on ESTA and farm workers' experiences (or lack of) this law, many of these interviews and conversations did not prove fruitful towards analysis. They did, however, provide a wider sample, to which the remainder of the narratives could be set in context.

## **Legal Pluralism and farm relations in South Africa**

Law in contemporary South Africa is focused primarily upon providing redress for those who were formerly discriminated against and disadvantaged by the unfair, unequal and racist past, apartheid. The negotiated settlement, with its Constitution, was put in place in 1994 to address past inequalities and to herald democracy.

The apartheid regime had, since 1948, legitimized a set of racist actions and premises based on spurious understandings of racial and cultural difference supported by Afrikaans *Volkekunde* anthropology (see Kuper, 1987: 1-2), by using 'legal institutions to construct and administer apartheid to legitimate and regulate the apartheid project' (Abel 1995: 3). The legal system provided for a certain amount of legal opposition, further legitimizing an inherently racist and unequal legal system with the argument that South Africa had an independent judiciary (ibid). Budlender refers to this as 'the paradox of the South African legal system' (in Abel 1995: i). This, in effect, shaped an opposition that used this same legal system in order to oppose the law, and due to the legal expertise of the opposition, to create a Freedom Charter that would form the basis for a future democracy based on rights and freedoms for all South Africans. The Freedom Charter (adopted by the South African Freedom movement in 1955) was in part informed by the Universal Declaration of Human Rights (UN: 1948) and in part by the specific social and economic conditions under which the majority of the country were forced to live by under the auspices of apartheid. It embraced the universality and immutability of human rights for all regardless of age, racial category, gender etc.

The Constitution includes a Bill of Rights, and as in the Freedom Charter, the thinking behind this was aimed to extend the protection that rights afforded 'more explicitly to the poor and other subordinate social categories' (Glaser 1998: 41) and 'to cover citizens' social and economic interests' (op cit). One of the main aims of the Constitution is to 'heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights' (South African Constitution: preamble), thereby addressing the injustices of South Africa's apartheid past. As Comaroff and Comaroff note, South Africa 'has fashioned for itself a

Constitution unusually attentive to universal enfranchisement and human rights' (2003: 3).

But the notion that human rights and duties can, in and of themselves, repair past injustice, is contentious, due to the paradoxical ways in which human rights oscillate between individual and 'community' discourses (see Cowan et al. 2001:15-19). They are in nature ambivalent (Dembour 1996: 20) and the terms in which they are couched (such as dignity) are often vague and elusive (Meyerson 1991: 253) and imply negative infringements or curtailments. The negotiations leading up to the ratification of the Constitution included sunset clauses that had not been foreseen by the ANC and their comrades in previous generations, but were seen as necessary to enable a relatively peaceful resolution a facilitation of democratization, reconciliation and nation building. During these negotiations, the National Party and other parties would not agree to ratify the Constitution until the Bill of Rights was extended to include the protection of property rights (see Guy 2004). For visions of land reform that might restitute land into the hands of non-White South Africans, this proved to be a nail in the coffin. More specifically, in terms of ESTA and housing, the 'property clause' recognizes private – mostly white - property rights more than farm workers' and dwellers' rights to security of housing tenure. The responsibility to house farm workers becomes not that of the farmers who retain property rights but that of the state, and provision of housing for all has not only been exhaustingly slow and riddled with corruption, but is also problematic in that it has merely replicated the urban and racialised spatial organization of apartheid.

In the past ten years laws have been written to give effect to the Constitution and its Bill of Rights. For example, the Basic Conditions Employment Act (BCEA) 'gives effect to the right to fair labour practices referred to in Section 23(1) of the Constitution by establishing and making provision for the regulation of basic conditions of employment; and thereby to comply with the obligations of the republic as a member state of the International Labour Organisation' (BCEA 1997). Workers' rights conform, then, to the global standard precedent set by the ILO, further articulating the universalism of South African legal rights discourse in the sphere of the workplace.



ESTA, however, addresses specific local conditions and the legacies of colonialism, slavery and apartheid. The BCEA and the Labour Relations Act (LRA) mutually inform ESTA, and this law is complex. Indeed, externalization and casualization of labour in rural agriculture mean that many farm workers face the threat or reality of dismissal and retrenchment, and when this is felt to be unfair, the provision of a hearing with the Commission for Conciliation, Mediation and Arbitration (CCMA) should take place within 30 days of dismissal according to the LRA. The problem faced by those dealing with ESTA is that many farm workers are not aware of this provision or even of the existence of the CCMA. One of the reasons that this gets little recognition for farm workers is that the CCMA should be approached with the assistance of a union representative, but farm workers have little trust for unions due to their past experience of union representatives ‘disappearing’ at key moments, and of farmers coercing them into abandoning union involvement. Union membership was, in the past, unofficially outlawed by farm owners. The apartheid laws that favoured a coloured workforce in certain areas meant that the majority of these farm workers were coloured, and coloured farm workers did not have the reputation for political organization or union involvement enjoyed by black labour. This was partly to do with the manner in which the classification of coloured was reinvented through the course of the twentieth century to place margins round it and to produce stratification within these margins, via techniques of governmentality (Jensen 2004). Critically, it is also because of the social history of farms themselves, going back to the transition from slavery to a labour economy, during which paternalistic relations were established (Scully 1997; Worden 1989).

In the local setting, legal pluralism in its formal sense is taking shape against the backdrop of paternalism which in itself implies a set of arbitrary, shifting and contingent rules. Walter often commented that, ‘there is the law of the land and then there is farm law’. The notion of farm law had always been present, as Walter himself would testify when describing the injustices and violence that his mother suffered while living on a farm. He also took this notion directly from his experiences of encountering farmers when he was a paralegal when he often found that farmers were indignant that the laws he recounted did not apply on their property. Yet nowadays, farmers are beginning to recognise some efficacy of

working with the laws of the nation, whilst they continue to assert paternal authority through farm rules and practices. Such dynamics are therefore constantly shifting on the rural landscape and their effects are reactions to the strategies of the state to build a nation of rights bearing citizens, a rights based democracy. In the moment of transition, two laws were therefore operating in rural South Africa: the laws of the land, those rooted in the Constitution, and the law of the farm.

Constitutionalism ‘domesticates the global speak of universal human rights, an idiom that individuates the citizen and, by treating cultural identity as a private asset rather than a collective possession, seeks to transmute difference into likeness’ (Comaroff and Comaroff, 2003:16). If this is so, then universality, or homogeneity, is pursued through the interlocutors of the law, and through the laws themselves, drafted as they are from the Constitution, as they translate laws from ‘state’ to ‘citizen’. As was seen in the description of my research, there is a large number of organisations and individual actors translating laws to farm workers, but also lobbying on their behalf for changes in the law. These organisations are not state agents, but active civil society, critics of the state and critics of the law. The failure of these laws to protect the rights embedded in the Constitution; and the multitude of actors and organisations representing farm workers as against the state, are part of a plural legal agenda in South Africa described within these pages. On the one hand, we have the nation building project of the state; and on the other we have paralegals, representing farm workers, who are critical at once of nation building and the failures of the state to promote the interests of the rural poor, and who are at the same time translating existing laws and rights to poor rural farm workers.

Below, I focus on ESTA, and its failures in action to protect farm workers.

## **The Extension of Security of Tenure Act (62) of 1997**

The law I have used as a lens through which to examine social relations on farms nowadays and rural activism in the Western Cape, is the Extension of the Security of Tenure Act (62) of 1997. This is an act of South African Parliament which has had direct effects upon farm dwellers and ex farm dwellers that were the central and primary ethnographic focus of my research. It was a law put in place to address the alarming rise of evictions of farm workers from South African farms towards and since the end of apartheid and to pre-empt further evictions. The Nkuzi Development Organisation and Social Surveys Africa estimate that ‘1 670 417 farm workers were evicted between 1984 and 2004 and only 1% were evicted by way of legal process’ (*Die Okkuperder*, November 2005).

ESTA is a law with roots in the Constitution, which states in Section 25 (6) that ‘a person or community whose tenure is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an act of parliament, either to tenure that is legally secure or to comparable redress’. As the Labour Tenants Bill was prompted by a widescale wave of mass evictions (Mashego 1996, cf. Greenberg 2004:8), the 1997 White Paper on land policy identified farm dwellers as having insecure tenure and therefore legislation, in the form of ESTA, was written to provide for the constitutional requirement in section 25 (6) cited above. According to Hall et al:

ESTA protects people who lived on rural or peri-urban land with the permission of the owner of that land on 4 February 1997. Such people are referred to in the Act as “occupiers”. ESTA applies to all people who live on farms, regardless of whether they are employed on the farm or not (2001: 3).

It ‘sets procedures for evictions and regulates relationships between farmer and occupier... by putting in place legal requirements before an eviction can take place (protective rights) and requiring the Department of Land Affairs (DLA) to make available secure long term tenure options to evicted ESTA occupiers (developmental rights)’ (Anthea Billy, June 2002).<sup>22</sup>

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<sup>22</sup> Unpublished discussion paper “Tenure Reform for farm dwellers: securing land rights or continuing insecurity?” presented at the Farm Worker and Dwellers Coalition meeting, June 2002.

ESTA protects particularly those who have lived on a farm for over ten years and are pensioners and those who have lived on the farm for over ten years and are disabled (permanent occupiers). It also grants the 'right to family life' in terms of the culture of the occupier, so that particularly dependents upon the primary occupier are protected. The primary occupier may also be dependent upon economic or social support from the rest of the family, and the right to family life is here relevant too. A farmer cannot evict a person, for instance, if that person is under the age of 21 and the main occupier has permanent tenure (given the requirements noted above). This has been quite important in challenging evictions that might otherwise have been watertight. I discuss this section in relation to experiences of evictions in ethnography that I use in chapter nine.

As well as responding to the post-apartheid mass evictions, the roots of this law are to be found in the Constitution (arguably, these are mutually constitutive motives). Hall et al. recognize the limited importance of the section of the Constitution cited above:

While this statement is a far cry from the vision of radical redistribution of land envisaged in 1955, it *potentially* provides for significant improvements in farm workers' (or rather, farm dwellers') access to land (Hall et al. 2001:3, emphasis added).<sup>23</sup>

ESTA is seen by all parties involved as a problem and yet at its roots, as with other laws, were the premises that 'unfair evictions lead to great hardship and social instability;... [and] this situation is in part a result of past discriminatory laws and practices' (ESTA 1997). As Moore (1978) notes, 'much legislation today either does not achieve what it purports or sets out to do, or when it does achieve specified goals, also spins off many side effects that were not anticipated' (1978: 7). It has been exactly in this way that ESTA, as detailed above, was conceived, and exactly in this way that it has had unintended consequences (see chapter six). Lawyers, paralegals and legal activists work tirelessly with this law; attempting to take advantage of the loopholes within it that have led to mass evictions, and lobbying government to change the law. There are creative ways of addressing loopholes in the law, but these

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<sup>23</sup> Paper given at the HSRC Conference, 4-5 June 2001, Pretoria 'What land reform has meant and could mean to farm workers in South Africa'.

involve a fight against time, for as farm owners become aware of them, they see that they can legally evict all those not working on farms. Farmers have begun to act on this awareness. Below, I examine where ESTA provides protection, which can tell us something of the extent to which the majority of farm dwellers are left unprotected.

## Key Sections of ESTA

The protection provided in ESTA is limited, as outlined above, to certain individuals who fulfill particular legal requirements. As was noted above, the failure of protection of even this minority of farm workers usually comes of lack of awareness, which legal actors (see below; also chapters five - eight) attempt to address. The Act includes the rights and duties of an occupier in *Section 6*. Section 6 comes immediately after a section that lists six fundamental rights of occupiers and persons in charge as stated in the Constitution. These are human dignity; freedom of security of person; privacy; freedom of religion, belief and opinion; freedom of expression; freedom of association; and freedom of movement. The rights and duties of occupiers are set out in section 6, stating that, *inter alia*, ‘an occupier shall have the right to

- (a) security of tenure
- (b) to receive bona fide visitors at reasonable times and for reasonable periods: Provided that—
  - (i) the owner or person in charge may impose reasonable conditions that are 25 normally applicable to visitors entering such land in order to safeguard life or property or to prevent the undue disruption of work on the land; and
  - (ii) the occupier shall be liable for any act, omission or conduct of any of his or her visitors causing damage to others while such a visitor is on the land if the occupier, by taking reasonable steps, could have prevented such damage;
- (c) To receive postal or other communication;
- (d) to family life in accordance with the culture of that family...
- (e) not to be denied access to water; and
- (f) not to be denied or deprived access to educational or health services

An Occupier may not—

- (a) intentionally and unlawfully harm any other person occupying the land;
- (b) intentionally and unlawfully cause material damage to the property of the owner or person in charge;
- (c) engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity; or

- (d) enable or assist unauthorized persons to establish new dwellings on the land in question.

(28 November 1997, Government Gazette)

The most important section of the act for lawyers and paralegals dealing with it is the one that sets out the termination of right of residence, *Section 8* (see appendix for full gazette). This provides for lawful termination of the right of residence

8. (1) Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to—

- (a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;
- (b) the conduct of the parties giving rise to the termination;
- (c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;
- (d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and
- (e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.

(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.

(3) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act.

(4) The right of residence of an occupier who has resided on the land in question or any other land belonging to the owner for 10 years and—

- (a) has reached the age of 60 years; or
- (b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge, may not be terminated unless that occupier has committed a breach contemplated in section 10(1)(a), (b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.

(5) On the death of an occupier contemplated in subsection (4), the right of residence of an occupier who was his or her spouse or dependant may be terminated only on 12 calendar months' written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10(1) (*ibid.*).

Sections 8 (1) (a) and (d) refer to agreements made between farmers and male farm workers to house them as part of the work agreement package. For many farm workers, such agreements were often made verbally, or with insubstantial documentation, and particularly for older farm dwellers, illiteracy would have prevented them knowing precisely what was in any written agreement, and so they would have relied on verbal communication with the farmer. For many lawyers, then, it is necessary to find out from the farm dwellers what year they moved onto the farm and what had been said at the time about agreement to live there. Section 8 (2) further stipulates that any contract of residence relating to employment will terminate when the employment is terminated in accordance with the Labour Relations Act. This means that written notice of eviction of two months can be given to a farm worker after they have had the opportunity, if they wish to take it up, to contest dismissal as unfair with the CCMA. A problem inherent in this is that farmers have always evicted farm workers from housing tied to employment when work is terminated. For farm workers, then, evictions are not new. However, since many farm workers have no awareness of the provisions of the Labour Relations Act (for example, that an unfair dismissal case must be taken up with the CCMA within 30 days of dismissal), most do not take up the opportunity to contest dismissals until it is too late. Awareness of one law is dependent on awareness of the other, and by the time many farm workers approach a paralegal to contest eviction, it is too late to make a case with the CCMA.

I particularly note section 8 (4), in which the conditions for status of permanent occupier (protection of tenure) are set out. For lawyers and paralegals dealing with ESTA, it was difficult to protect the tenure of those that were not in this category; that is, most farm workers. As we see in chapter nine, creative means were used to protect tenure, through using familial ties in terms of rights. However, most farmers are now aware of this section of the law, and will put safeguards in place to

guarantee that a farm dweller is evicted before they become a permanent occupier, by drawing on the LRA which specifies that dismissal is not unfair if it is for the reason of occupational requirements (i.e. if the number of workers on the farm is surplus to the number needed). Many farmers now cite occupational requirements as a means to reduce the number of permanent workers and thereby evict farm dwellers. Following this they hire off farm, contract labour, to carry out the same jobs previously done by the permanent core of labour.

When translating ESTA for paralegals and police unfamiliar with it, lawyers in the SFP always underlined this section, since lack of awareness of it had led to permanent occupiers being unfairly evicted, a criminal offence. It was of fundamental importance to document how long farm workers had been on the farm and whether they were retired or disabled, as this guaranteed automatic protection for permanent occupiers and their families. However, with verbal contracts, illiteracy, and the passage of time, we encountered farm workers who could not remember the year that they had moved on to a particular farm, and so it was down to the word of the farmer and the dweller.

### **Translating the Law, representing farm workers**

Whilst I was in the field, a range of legal actors attempted to form a coalition to galvanize lobbying and representation. I therefore refer to the sum of activists as a movement I call the 'rural legal movement', even though parts of the movement did not always operate in a co-ordinated manner. Organizations involved in movement activities include LHR, The Constitution and Bill of Human Rights project, Dopstop, the Women on Farms Project, the Programme for Land and Agrarian Studies at the University of the Western Cape (PLAAS),<sup>24</sup> the Cape Law Centre, the Centre for Rural Legal Studies, the Landless Peoples Movement, unions, such as the South African Plantation and Agricultural and Allied Workers' Union (SAPAAWU; under the umbrella organization COSATU), and the National Community Based Paralegal Association (NCBPA) under the umbrella organization the National Paralegal Institute (NPI). The individuals representing farm workers that I worked with were paralegals. Paralegals were more daily access to rural communities than some of the

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<sup>24</sup> Afrikaans for farm.



other organizations and were critically involved in the movement in documenting problems with laws and experiences on farms. I therefore introduce them in some detail in this section. The history of their activism is described here, as well as some of the different ways they work. Their position in relation to farm workers and in relation to the law is outlined in Chapter seven, which describes how they translate laws and human rights to, and represent, farm workers; and also how they are being drawn increasingly into a more uniform provision of legal services (through their own efforts as well as those of the state) and the implications this has for their activist work.

Paralegals operate as a first port of call for farm workers, as they are based in the communities in which they work. The description of their more general work, and the roots of their activism, shows a stark diversity of sphere of action in comparison to the work of lawyers in this activist movement. It is usually the level of their local knowledge, law, and the contexts in which they are allowed to negotiate and represent, which set them apart from lawyers. Paralegals tend to be funded from local supporters, though some I met had financial support from international funding organizations or from Unions. However, such funding tended to be insecure. Some relied on cheap rental spaces from municipality or church organizations. Others operated from their homes, thus cutting certain costs to a minimum.

Paralegals are not subject to the same strict criteria as lawyers, as they can withhold information from courts, but can simultaneously be crucial to a case merely by advising a client/ friend (because the two are not always mutually exclusive agents) on legal action. Such a role is integral to maintenance of local trust relations in the sense that the paralegal is in the community, the lawyer is outside of it. One informant told me of a case where he was able to advise a man who, while driving, had been responsible for a 'hit-and-run' accident and had been

'picked up later by the police. They didn't have enough proof *beyond reasonable doubt* in this case. The man and his family's livelihood depended on his not being sentenced even though he *was* guilty of a serious crime. When he came to me he was really scared. He told me what had happened, and that he had come to see me because he didn't know what to do. I was able to tell him what to tell his lawyer, who can only then act on what the client has told him or her. If I was a lawyer I could not do that – but because I know what a lawyer will do with certain

information ... well they could not prove that he had done that, not beyond reasonable doubt, and a lawyer would have been in a different position with the information that I had... but this was a criminal case, see, and I couldn't deal with it. That guy is still living here, in Pineview. I see him and his kids... but maybe he would be in prison now if he hadn't come to see me that day.<sup>25</sup>

Many paralegals that I encountered had been legal activists the late 1970s. Rural paralegalism was born, according to one activist I knew well, from a need to act on arrests and evictions of local people in a legal manner. Though the conditions in which they work have not changed much since the 1970s, the laws and rights they translate are on the surface dramatically different. They translate problems or issues that farm workers have with farm owners into legal terms, thus re-orienting the emotional and relational problems between farmers and workers, that are inherent in paternalistic relations. Paralegals attempt, as with the story of Nikki in the introduction, to re-educate the people involved, including farmers, dwellers and the police, to translate what are on the ground subjective and emotional experiences into legal language and relations. They also attempt, in effect, to produce legal activists. Through such translation it is hoped that members of a nation become re-educated on their rights; a perhaps poor but legally literate population of rights bearing subjects. This is thought to provide a way of improving economic circumstances by fighting injustice with rights talk and action.

At every stage, and at the margins of constitutional rights law, apparently at the margins of society, paralegals mediate between the formal legality and relationally orientated legality; between form and substance. However, paralegals' situatedness in the communities in which they work entails the switching of position across legal margins to relational ties of local kinship arrangements. These are then transferred back into legal speech acts. The forms of legality that paralegals mediate are between those of the state and those of their own resistance to the state. By translating laws to farm workers through the language of human rights, paralegals are fulfilling a role that the state has failed to provide for rural indigents in any other form. In this way they are furthering the state's project. On the other hand, paralegals tend to see their role primarily as one of resistance. They use rights in order to further the socio-

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<sup>25</sup> Personal communication from a paralegal who wished to remain anonymous on this matter.

economic situations of poor rural people; this is their priority. The roots of their profession, as analysed in Chapter seven, are key in analyzing why paralegals occupy these two seemingly opposed positions. It was their opposition to apartheid laws and their activism through a new language of rights that motivated them. These motivations have not changed, but the state to which they resist has changed massively. Politically, then, many paralegals identify with the old order opposition parties, the grass roots ANC or the PAC, but identify less with the ANC government which has prioritized neo-liberal values over its Marxist roots. The loci of these legalities are examined in the second part of the thesis, in which they are used as a lens through which to look at types of representation made on farm workers' behalf.

## **Organisation and argument of this thesis**

The argument of this thesis addresses research questions set out above. Here I explain how the thesis is organised and structured around the argument, one that has become explicit through an examination of ethnography documented over 18 months between 2002 and 2003.

I argue that in addressing historical relations on farms through laws, the various legal representatives examined in this thesis implicitly describe those historical relations, yet explicitly they draw on the language of marginalisation (also drawn from academic development discussions), as a platform for action that implicates not just the farm but also the state and wider society in allowing their continuation. In spite of the efforts of these organisations and individuals, their attempts to transform paternalism into a legal relation are thwarted as legality and the state itself, in its attempts to foster universalism, are plural and fragmented. The laws, state departments, and laws' translation into practical, local knowledge, demonstrate this fragmentation. This fragmentation produces different forms of legality, or ways in which farm workers experience different legal practices at various points.

Legal Pluralism is evident in the ethnography at the levels of interactions between laws and failures thereof; the emergence of different and sometimes divergent human rights from laws; forms of representation and the variety of testimonies produced by these; and, on a wider level, the attempts to transfer one set of prior relations (i.e. apartheid) into language of empowerment and law. These attempts fail, and the reason for this are the failures of laws such as ESTA, examined ethnographically in the thesis, and other labour laws, to engage with one another. Because of the different legalities and fragmentation of law, action to protect the rights of farm workers either becomes halted (stuck in parts of an inter-relating system), or the system itself acts against itself (the law ideally meant to protect farm workers' tenure on farms provides farmers with a means to evict, or protects the historical conditions of paternalism). Legal actors and organisations that set out to help farm workers by working through ESTA law can only attempt to translate the situation of the historical relations and their legacy on farms, into legal language rather than transform them. Multiple examples of farm dwellers' experiences of law and legal

engagement and paternalistic modes of protection competing with these are explored in the thesis and show how laws that set out to transform unequal historical relations merely reproduce them. Modes of representation, described in the second part of this thesis, also seem to re-enact the historical power disparities that paternalism create.

The way the thesis is organised into two parts suggests a separation of spheres which may seem imposed. Indeed, the way in which the fieldwork was organised in terms of a timeline, in two apparently distinct field sites, may have had a part to play in imposing such a distinction. Yet as may also be apparent from the description of fieldwork above, these field sites, or spheres of influence, were not so distinct, but they did not always relate to one another as the actors involved intended them to. The distinction of two parts is not therefore an artificial, imposed organising schema, but more of an organic distinction reflecting not only the ways in which the data presents itself, but also how events and narratives are seen by actors involved in this fieldwork. If the thesis is organised in two parts, then, it is organised from two apparently quite distinct perspectives. Where the distinctions are blurred is the bridge (in terms of the argument), and I provide a bridge chapter (Chapter five) which analyses the space where perspectives meet or collapse.

Part One is oriented from the perspective of farm workers that I met, came to know well and interviewed. Chapters two-four show how farm dwellers live in paternalistic relations in that, first, they are bound in intimate relations with the farmer that constitute more than working relationships. Second, their private lives are public and subject to external intrusion (on the farm) i.e. the family unit is part of the wider paternal 'family' of the farm. Third, farm dwellers (particularly workers) relate to each other as 'children' of the farmer ('father' figure) through either narratives of jealousy and favour, or by attempts to unite (against him). Their relations are constantly defined and negotiated in terms of their relations with the farmer. All of this is discussed in Chapter two. In Chapter three I describe how paternalism is gendered and racialised. Here, I examine exactly how female informants in this study are not only doubly subjugated by these relations, but also are secondary in terms of laws because of their 'traditional' status within this paternalistic system. I document how they have in their lives experienced domestic violence, and how the 'culture' of farms has at once produced such violence, allowed its continuation, and

simultaneously provided limited protection for victims (without state law). In Chapter Four, I examine how farm workers' poverty in relation to wider society maintains this situation, and reproduces dependence on farmers and on each other. It documents how and why farm workers are represented as being 'marginalised' from the rest of society. Changing employment conditions and the effects of these are discussed here, with particular reference to the ways that women are doubly affected by this. I also discuss marginality as a reflection of the lack of access to resources, whether these be economic, educational, or legal resources. Farm workers are more insecure than ever in spite of laws that were brought in to protect the developmental, human and political rights of all South Africans; indeed, partly because of those laws. Each chapter in Part One draws on life history interviews with farm workers and dwellers, interviews with the same about experiences of eviction and law, and participant observation with farm workers and paralegals.

Chapter five, the pivot chapter, reflects the space where activists and farm workers meet. I discuss how the concept of marginality has been developed through testimony, and how testimony, as one form of representation, is an action that creates legal actors and activists of farm workers who were once powerless to deal with problems described in chapters two-four and with the moment of eviction described in the three ethnographic descriptions in the introduction. The concept of marginality, I argue here, is mobilised as it takes the focus away from the relationship between the farm worker (as individual) and the farmer, which might only serve to exacerbate the problems encountered in these relations, and contextualises it in the wider realm of society, in relation to the government, new laws, and legal resources. Further, it is a platform for action that, as it is used by activists, invites farm workers to galvanise their efforts instead of working against each other: to manoeuvre their human rights in terms of development rights. In this chapter I examine the concept of testimony, and use examples of testimonies that I observed during fieldwork. Examples of testimony are not only legal, but also take the form of meetings organised by NGOs, dramatisation, and an interview conducted with a former farm worker who has become a case worker with an NGO working on development issues with farm workers. Such testimonies, I argue, are productive of the concept of marginalisation that is conducive to more productive change.

However, much of this testimonial practice, as well as drawing on the language of human rights, also draws on powerful existing notions of family life and kinship in, notions now familiar as the founding principles of paternalism, but with a difference.

As Part One is seen from the perspective of farm workers, Part Two is from the perspective of the rural legal movement, and focuses on legal actors and Acts. It examines development and changes to traditional paternalistic relations on farms from the perspective of legal activists and the rural legal movement. It begins with a chapter that examines ESTA more closely, and further, the ways the loopholes and failures of the law are dealt with by this movement. I look at the problems of lack of awareness of the law among other relevant agencies. I also examine some of the activities of the SFP, including a description of a negotiation on housing provision, and how the implementor attempted to address some of previous failures of housing provision. The description also shows some interesting, changing dynamics. The other ethnography examined in Chapter six is a description of the SFP's training for farm workers who were undergoing an eviction – another initiative to 'fill in' where the law was failing to provide a timely outcome.

As discussed above, paralegals were key in translating complex laws to farm workers, and in implementing them at times too. How they do this, and the position that their methods put them in, is described and discussed in Chapter seven. I examine the position of farm workers here taken from Chapters four and five, as marginal, and look at how paralegals shift positions between these margins and law, or the state itself. I show here that they are liminal characters in terms of paternalism and law; in terms of the past and the present; and in terms of their legal representational powers, as they mediate between different individuals and agencies. I draw particularly here on the work of Steffen Jensen (2004) who, in discussing community workers in the Western Cape, argues that the concept of community 'has become a nodal point for political power struggles, state formation, and the production of political subjectivity' (2004: 179).

Such initiatives described in Chapter six were important in addressing ESTA's failures, although Chapter eight shows that the law itself is not solely to blame for continued mass evictions and homelessness. I focus there on the production of

dramaturgic performances that place rights of farm workers at the centre of their mission. These performances are the Western Cape public hearing for the Human Rights Commission's inquiry into human rights in farming communities; and the report that followed the inquiry. Therein, I show how the fragmentary nature of legal forms were clearly performed to quite dramatic impact. I also ask whether, in terms of nation state building, this commission could be seen as a continuation of the work of the famous Truth and Reconciliation Commission, by drawing on existing anthropological discussions of it (for example, Wilson 2001). I use the ethnography then to suggest that these performances were used as a tool by the civil society described in these pages for the legitimization of its continued work, as well as to inform policy and practice – it was itself a form of lobbying.

I conclude the thesis in Chapter nine with ethnography relating to the right to family life, as it is set out in ESTA (and described above). This ethnography focuses on a key theme of the thesis, family, and on how a concept so deeply embedded in paternalism is being used to redress it. I examine this paradox and question whether it is really desirable for this notion to be used, as it perhaps replicates and reproduces paternalistic dependency as it has been described in this chapter. As the conclusion, chapter 9 then returns the gaze to the ethnographies in the introduction, and examines them in the light of the arguments made in Chapters two to nine.



## Part I

### Chapter Two - Family on the farm, Farm as Family

*‘These people, they are just like children. For so many years we have been friends to them, and we have helped them, but in the end they are really just children’*

(Quote from a land owner who was attempting to evict coloured tenants)<sup>26</sup>

In this chapter I explicate a central concern of this thesis; how family life and farm life are mutually implicated through paternalistic practices that continue. This chapter looks at the importance of family to the construction of paternalism and the ways paternalism shapes the daily lives of farm workers living on farms; how relationships formed through work and life in the farm are the central governing structure of ‘good understanding’ (see Sarah’s comments below), or its reversal, between farmer and workers. According to literature examined in the introduction, these relationships are shaped by paternalism that creates an organic family like community on the farm where the farmer assumes the position of the father. Central to the ideology created is inter-reliance on family; but this is tied with a reliance first and foremost on the farmer. Here, the strength of the metaphor of the father-child relationship between the farmer and the worker must not be underestimated. In paternalism, the farm *is* the family, and the individual family unit operates within this scope. If the farmer is the father, the workers are children, and the authority of the farmer is ultimate. The farmer (as father) is either benevolent or punitive; in turn, workers (as siblings) either unite against the farmer or betray each other to the farmer because of jealousies, or to obtain favour (benevolence) from the farmer. This metaphor is powerful, and the farmer’s power and authority means that the farm as a family has its own rules that must be adhered to. Even nowadays, on many farms this law of the farm is more powerful than state laws, in that even when ESTA or labour relations law is operated by or on behalf of the farm worker, the farmer has already punished them. The worker in question is then isolated from others who are still held

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<sup>26</sup> The land had not been used on farm land for many years and the white land owner couple and coloured farm worker family had become friends over the years. An argument had lead to animosity between the parties and the white couple approached LHR in the hope of evicting the family legally and coming to a settlement. The Afrikaans couple adopted the role of grown ups, and suggested that the coloured couple, who were the same age, could not be responsible for settling the argument.

in regard by the farmer. As Walter often commented ‘there is one law of the land, another on the farm’.

Throughout history and to this day the individual farm worker relates first to the farmer, and this relationship is mediated by the senior male member of the family in the first instance – when the conditions of employment are agreed and the house is provided as part of these. This relationship continues until the moment that is the focus of this thesis; the eviction, when these ties are potentially permanently cut. By the time legal advice is obtained, or a particular law such as ESTA is manoeuvred, unless there is automatic protection under the law, it can do very little to prevent the inevitable movement to another farm. The law therefore fails to protect farm workers because of the strength of paternalism – in reality, it is only the farmer that has the power to protect the farm worker. If tenure is protected by law, then, as shall be seen in this chapter, the family or worker must continue in a certain relationship with the land owner, and if that is broken down, they will be subject to the punitive side of the farmer’s authority. In this way, laws that at one level might appear to break down the dynamics of paternalism, merely reproduce them, as the power and authority inherent in these relationships override any legal ones.

For all the people in the ethnographic examples below, narratives of jealousy and informing practice were integral to their decision, or their being compelled, to leave the farms on which they were living and working. Prior to this, protection, both through racist apartheid policy and, since then in the 1980s, through hegemony created by paternalism and limited welfare intervention, had allowed them to continue to work and live on farms. Coloured people had, since slavery, been guaranteed housing with permanent work, and this was usually agreed between the primary male breadwinner and the farmer. Du Toit has argued that farm workers have tactics of resistance to farmer’s authority. However, these ‘weapons of the weak’ which, drawing from Scott, he argues create an underground of collusion activities, are part of paternalism and seem to draw farm workers back into the individual relationship with the farmer. The input of law, in the form of ESTA, does little to challenge this, as it also operates on the basis of a narrative between farmer and individual worker. This is demonstrated in the section below, following which I draw on ethnographic examples of families living on farms to show how experiences

of paternalism are similar, and how at the moment of failure of the relationship, the only recourse people have is to their families, which are at the same time part of the institution which caused the problem.

### ***The Union***

Here I explain the events that led to several families being retrenched and threatened with eviction on the farm on which we spent a lot of time. The failures of law and legal actors to prevent these effects of paternalism are highlighted here, and it also provides the context in which the du Vries family, described in the following section, faced eviction. When we first met the people involved in the case at Primrose farm, we were told by Raymond, the local paralegal, that 6 people had had CCMA cases for unfair dismissal because they were retrenched in 1999. The families had each been threatened with eviction and Raymond was waiting until each family had received eviction orders from the farmers in order to make an ESTA case against the farmer (which would be referred to a lawyer from the SFP). Each family had additionally had their electricity and in some cases their water cut off because the farmer expected them to pay for these services. Raymond also told us that those who had been retrenched had had trouble securing work because when they attempted to get work on other farms, the farmer had phoned the other farmer to tell them not to employ these workers.

The CCMA cases had been open since 2000 with condonation,<sup>27</sup> and although an amount of severance had been settled in some of these cases, with the exception of one, they had already closed without a judgment of unfair dismissal because of technicalities; the main one being that official motivation for retrenchment, operational requirements<sup>28</sup>, could not be disproved. For each worker, then, it seemed that the best that they could hope for was some settlement on the amount of

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<sup>27</sup> The CCMA stipulates that the time between alleged unfair dismissal and taking up a case should be no greater than 30 days after all other avenues have been exhausted. A case may be taken to the CCMA after this if an agreement of *condonation* is reached between both parties with the CCMA. Condonation is an application from the employee 'to condone the reason that he [sic.] failed to refer his case timeously' (CCMA website).

<sup>28</sup> Operational requirements are based on the cost of employing permanent workers against the costs of running the farm and financial performance of the business. We heard that many farmers were retrenching farm workers in order to reduce the permanent work force. Following this they would hire skilled workers to do the same work from outside contractors (off farm labour), and proceed with evicting the farmworker and his family from the houses.

severance pay they should have received from the farmer. Indeed, by the time we arrived on the scene, the only case still pending with the CCMA (not rejected as unproven unfair dismissal) was Sarah Du Vries'. As in many cases of CCMA cases involving farm workers, it was difficult to prove unfair dismissal, particularly if the farmer cites operational requirements as his reason for retrenching workers.

The first entry in my notes from my first visit to the farm briefly reads '5 families, all permanent workers, retrenched and threatened with eviction, *each with separate stories*' (February 2003; field notes). I highlight this here because in this brief statement it was observed that although each family had been through similar experiences with the farmer, and had all been involved in a union, each story was unique. This point was expressed in a group interview I had with several of the women involved, where they first told me about the context of the retrenchments but each insisted that their experiences had been distinct, and that they should tell their stories separately. Prior to this I had noted how lawyers and paralegals noted the specifics of each individual's experience; here, though, it seems that this kind of legal interaction did not produce the individual narrative as each was already separated by experience. In other words, each story is slightly different in terms of how the farmer has addressed each one. Each felt that in some way they had been intimidated by the farmer over both the retrenchments and the threatened evictions, but for each family the type of intimidation had been specific to them. The question one must ask is why, when the workers all went on strike for the same reason, the farmer has treated each family differently; the answer lies in the paternalistic relationship. The remainder of this chapter shows the uniformity of narratives of farm life (paternalism). The creation of the individual narrative, it seems, has some purposive element within these dynamics – of recreating the individual contract, and of drawing individuals away from collusion by threatening individual family's welfare (security of housing tenure).

Sarah said she had joined the union because since the new farmer had taken over the farm there had been a loss of perks. In 1990, she explained, the new farmer took over, married his second wife, and 'for a while everything was fine'. However, they began to notice that everything was getting more expensive in the farm shop. There had always been toys for the children at Christmas, and the farmer's wife had always

given blankets, towels and other household goods as Christmas gifts to each household. The farmer would hold an annual end of season braai which was always a big party. In the late 1990s the farmer began to remove these perks. In addition, he had began charging for things such as visits to the doctor, for which he charged R10 per person when previously this had been free. She talks of a change of 'understanding'. She explains

The situation got worse and we no longer had a good understanding with the farmer... They said on the farm that everything is now expensive and they couldn't afford to get us those things now. We were told we would have to get our own and pay for them ourselves. When things got broken in the house we had to mend them ourselves, so some of the men went looking for the union and they found the General Workers' Union (March 2003: fieldnotes).

The farm workers began to hold union meetings on the farm and a representative came to help organise them. At the meetings they would discuss the loss of privileges, and other complaints related to work. According to Sarah the farmer had initially supported the decision to join the union, and had provided an empty house in which they could hold meetings. The workers began a strike and the representative told them that he would take their case to the farmer. After some months of being on strike the representative stopped coming to the meetings. Sarah said she saw him one day and asked him why he had stopped helping them. He said that he had another job somewhere else. The union sent another man, 'a black man', Sarah said, a month after the other representative had stopped coming to the meetings. He went to see the farmer and decided that they should go back to work. 'We refused because we wanted things back to normal first', Sarah told us. After 7 months of being on strike and much confusion, the farmer began to approach the workers one by one, telling them that they could come back to work or they could continue to earn nothing. Some of the strikers went back to work. 'For me', Sarah told us,

it was a matter of solidarity and standing with the other workers. The farmer invited me back to work in the crèche and asked me to sign a document. I didn't properly understand what was in the document and I refused to sign it. The mechanic was there and the farmer asked him to sign it on my behalf, as a witness to my not signing. Then he said that he would get someone else to sign on my behalf. I said I could sign but I

was refusing, so the mechanic signed that piece of paper (March 2003: fieldnotes).

For Sarah, this was not merely intimidation directed towards her to return to work. Without the others, Sarah's crèche services were not needed. The farmer was putting pressure on Sarah in order to put pressure on her husband and on the other workers to return to work – the farmer knew that she was well respected and trusted by the other workers who had been on strike, so if he could persuade her to return to work, the others might follow. The farmer, by persuading this individual, was also attempting to influence the collective unit whose members were acting in solidarity with one another. Additionally, he treated Sarah as a child by getting another worker to sign on her behalf the document she refused to sign herself. Sarah was perhaps seen as a spokesperson for others, or more likely, as a senior *sibling* in the hierarchy of workers' relations with one another.

For the other women and men that we interviewed on this farm, the stories were similar. Each was retrenched after striking and refusing to return to work and most were then asked to pay rent. However, there were subtle differences in each case. For instance, Anne told us briefly

I was retrenched at the same time as everybody else. Then the farmer expected us to pay for rent and electricity. We were out of work and had no money. Now he has cut off the electricity and the water and I am facing this eviction (March 2003, fieldnotes).

But for Rebecca the story was different. She had also been retrenched and had had a case with the CCMA, with which severance pay had been settled. But the difference here is that although she and her family were now threatened with eviction, they had not been asked to pay for electricity or water; she said she had no idea why this was the case. She and her husband had also had difficulties procuring work on other farms because of the farm owner's intervention. For Theresa and her husband, having won severance pay, they had agreed with the owner that they would move out. Walter appealed with them that their case might be strengthened if they joined the others and talked to the lawyer, but they had made a deal with the farmer, and an amount had been agreed to be paid to them by the farmer as long as they vacated the house in 2 months. Since there was nothing illegal in this, and a settlement would have been procured in their case anyway, Walter did not push it. Just before I

finished field work, I saw Theresa's husband and he complained that the farmer had agreed to provide materials for them to build on to their relatives' house in an RDP area, but he had not yet furnished these materials even though it was now time for them to move. The law also treats every case in isolation, but the farmer seems to be engaging in shifting terms of 'understanding' with each family on an individual basis.

In the past, each family had moved in and agreed the contract of the tied house with the farmer. When dealing with evictions, this farmer likewise negotiates privately and individualistically. The danger of this is that intimidation may be used with particularly those who were already vulnerable and insecure in their work or accommodation.

Though Walter encouraged the couple above to protest against their eviction, it seemed that their case would have been weak, and the collective experiences of the dwellers would not have much effect on their chances of securing their tenure. However, the agreement that they had come to with the farmer had not been brokered with a legal agent (lawyer or paralegal) and was still inscribed in the trust relations that had previously tied them to the farm. They still relied on the farmer for materials, which he had promised to give, but it seems they had no guarantee of this.

The families' solidarity was offset by the isolation they felt from other workers, particularly those who had chosen to return to work following the strike. Now that they lacked protection from the farmer and faced the punitive side of paternalism, they continued to support each other. However, there is always an element of distrust in these relations, as Serafina, a permanent occupier who had also been threatened with eviction, implied when she insisted that she did not want to talk to us on the farm where others might hear and gossip. She said 'the others all drink at the weekend and then the talk will start, the jealousy... I would rather talk to you somewhere else'. The proximity of the houses, the dependence on each other, and the fragile nature of these relations all inform the story of being '*deel van die plaas* (part of the community)' (Du Toit 1998). The intimate connections between work and home were played out between and within houses, and certainly in and out of the orchard, packing shed, or vineyard. Further, the element of separation from each

other (drawing away from the intimacy and the jealousy this produces) is already implicit in farm relations, even in moments of apparent solidarity.

### ***Family on the Farm***

A few days following the group interview with some of the women whose families were threatened with eviction, we drove again to Jutland farm in order to begin individual interviews. Jutland farm and housing complex is in a valley. On most visits to Jutland we would arrive to the farm to find Pieter Du Vries sitting on the top of a small hillock, sometimes with other farmworkers, behind the house that he shares with Sarah. He told us that he sat here in order to see when anybody was coming onto the farm from the road. Over the following months we got to know Pieter, his wife Sarah, and his father Nikki.

Nikki Du Vries was known on the farm, and to us, as *Oom* (uncle) Nikki. He has eight grown up children, and he told us about two daughters who live in Pine View, an older quarter of Grabouw that was formerly the official coloured township, still predominantly housing coloured working class people, with whom he often visited. We met Nikki after hearing about his problems with the farmer through his son and daughter-in-law, Pieter and Sarah. We learnt that Nikki had been depressed with grief since the death of his wife the year before. Sometimes we would visit and find that he had been staying in Pineview, or that his curtains were closed and he was in bed.

In the introduction I discussed how Nikki Du Vries was intimidated into leaving his house on the farm where he had lived all of his life, in spite (or because) of the fact that under ESTA he was a permanent occupier. I described how on the day of his wife's funeral, Nikki's electricity had been cut off and months later, when I met him, his electricity had not been reconnected. The way in which Nikki understood this action was personal, and related directly to his life long family connection to the farm. Additionally, his son Pieter and his family had lived on the farm for many years, had brought up their own family there, and had been threatened with eviction when a number of other families had been threatened because of their involvement with a union. However, what each family had in common was involvement in the union. Nikki, however, had not been involved in union activities, since he was



already retired, and therefore the personal nature of the actions taken by the farmer was more keenly felt – he himself had done nothing to provoke such treatment from the farmer.

Nikki's legal status as a permanent occupier comes to inform his relationship and his family's with the past and the present. It is through the farmer's behaviour towards himself as a former valued and respected permanent worker that Nikki values the present time. The differences between 'then' and 'now' are clearly evoked in the emotive narrative. Nikki has a moral and emotional connection with the farm's people (the farmer's family particularly) as well as the soil, including in this interview the larger jobs that he has done on the farm, and the time that they took. The time since the new farmer took over and the land was split up was characterised by a slow break down of relations and some changes to work practices (though the effects of these on Nikki were minimal, since he had retired by the time other workers joined the union).

Nikki chooses not to focus on the period of time described by others when the farmer changed conditions on the farm; it is the women on the farm that tell this story. Nikki concentrates on the larger jobs that involved high degrees of trust and great strength and perseverance in the past; building a dam far from the main farm with a small core of workers involved hard physical work, and that he had been chosen to do one of the more difficult and dangerous jobs implies that the farmer had held him in regard. He gave us the impression that there had been a great deal of privilege because of the degree of trust that the farmer had for him and his team. It involved a dignity which was shattered by the events around the time of his wife's death. Yet his dignity now came of his apparent nonchalance around the issue of charging the farmer in criminal terms (under the provisions of ESTA), and also of his refusal to either move out of the house or to pay for electricity (one of these had been the farmer's excuse for cutting it off). In spite of the efforts of the paralegals to persuade him to press charges, and Walter's insistence on pressing charges on his behalf, when I talked to an ESTA lawyer about the efficacy of doing this, she said that his case was weak, as ESTA only protected him (as a permanent occupier) from having his water turned off, and if the farmer had done this as well, they could have approached the farmer formally and persuaded him to return all services to former provisions.

Yet it was something other than the weakness of the criminal charges that informed his decision not to press charges, something more personal and relating to his future on the farm. Nikki would continue to live there because of his permanent occupier status, and because of this he did not want to cause more trouble with the farmer.

What concentrates the feeling of outrage at the indignity of the act of shutting off his electricity is the length of time his family has stayed on the farm, the relationship the farmer and his wife's son and nephews had had in the past, the equality that childhood play had offered briefly, the brief breakdown of boundaries. Nikki is nostalgic for the past, and insists - by way of telling his story in the way he did - on contrasting that with the present. But what really hurt Nikki was the day the farmer had chosen to cut off electricity, the day of his wife's funeral. From here there is no turning back to former relations with the farmer, although the relationship continues because of his legal status.

### ***The Du Vries family***

Pieter, Nikki's son, was 52 and had lived all his life on this farm. He had worked on the farm since 1967 until he was told that there was no more work for him on 24<sup>th</sup> May, 1999, on his birthday. Under the ESTA (again, section 8 (4)), Pieter was a permanent occupier because as well as having lived on the farm for more than 10 years, he developed epilepsy whilst living and working on the farm. For this reason he and his wife could not be threatened with eviction. But the farmer had begun cutting off the electricity and water of the other occupants who had been involved with the union and threatened with eviction, forcing them to either pay for these services, which had always been included with the provision of the house, or to do without. This was a tactic that Walter recognised as a way of intimidating the workers to move out of their houses and off the farm, by making living there more expensive or more uncomfortable. Those who had had their electricity cut off managed without it, but water was a different matter – they were forced to pay for water or use the taps of their neighbours. Only later, after we had known Pieter and Sarah for over a month, was their electricity cut off, in spite of their protection under the law. It seemed that the same thing had now happened to them as had happened to Pieter's father. However, the cutting off of their water could be directly addressed

through ESTA as section 6 (1) (f) stipulates that ‘an occupier shall have the right not to be denied or deprived access to water’ – it is clear cut, without the ambiguity of Nikki’s situation.

Although Pieter is a permanent occupier under the law, the couple understandably do not feel particularly secure about their status. They suggest that even if the farmer may not legally evict them from the farm, he would like to move them into a smaller house.

Sarah had been working in the crèche, and her reason for striking was not only to stand by the other workers and her husband, but because the crèche had mainly been used by those permanent workers who were on strike, and who did not need the crèche at that time. She saw the agreement to return to work that the farmer had asked her to sign as a way of getting her to put pressure on her husband and on the other workers to also return to work. This suggested that she had quite a lot of influence with others, and it seemed she was indeed trusted by most of the other women involved in the strike.

For Sarah, one of the main motivations for striking in the first place had been a break down in relations following the loss of perks and welfare provisions. All the farm workers had agreed to this with the assistance of the union before the organiser had disappeared, and returning to work would certainly not address the reasons why they had joined the union in the first place. Neither Sarah, Pieter, nor their fellow farm workers, returned to work, and the need for a crèche was as suddenly absent.

Pieter was retrenched after he had been diagnosed with epilepsy and the doctor had told him he could only do light duties on the farm; this meant working no more than three days per week, but he said that the farmer interpreted the doctor’s instructions as him being able to continue to work as normal. At this time, Walter told me, there had been a lot of debate about unionizing farm workers, and many farmers had been against it. Pieter and Sarah joined the union, and went to some of the meetings. Pieter was assured that he should be given only light duties, but at the same time as all the other farm workers who I spoke to, Pieter was also retrenched due to ‘occupational requirements’. They all knew that what they all had in common was their involvement with the union.

Pieter and Sarah may have been protected by the law because of Pieter's disability, but the tenure of their house was not fully secure in their eyes. Another woman in a house close by had had marital problems, and she and her husband had separated. She was struggling to support herself and her children on the wages of the packshed and she was working nights. Her grown up son and daughter had moved away from the farm, but she still had a teenage son and younger daughter living with her. Nikki and Sarah had now taken in her teenage son until the season ended. They had unofficially fostered him, so he was living in their house, which meant that they did not have as much room as the farmer imagined. They were still concerned for the mother of the child and did not want anything to jeopardize their arrangement. They saw the arrangement with their friend and neighbour as a temporary one. Sarah and the neighbour were close through the difficult experiences they had shared, and Sarah wanted to help her. By explaining to the farmer that the child was now living with them, they saw a possibility of the farmer enforcing the eviction of their neighbour.

***'I am not a child'***

(George, in interview)

The informants, George and his wife Karen, were in their late fifties and supported a large family in various manners. Karen looked after her granddaughter who often slept at her house when her daughter worked nights at a local pack shed. She made bread for the family, and their house, with extensions that they have built, had room enough for their grown up children to come and stay if they needed to. The principle wage owner, George, worked for a contractor and explained how much happier he was working for a contractor than for a farmer. Karen no longer did farm work, staying at home to look after her granddaughter and the house work. They managed well on George's wage from contract work.

Like many other farm workers, they had met on a farm:

George: I met my wife when she came to the farm to do seasonal work. When she got pregnant, I went to the farmer and I explained that she couldn't go back to her parents, and that I had to look after her. The farmer gave us a one room house on the farm...

The farmer had helped out when she had had her first baby, and had given her work when she could. In the course of the interview, George and Karen<sup>29</sup> told us of their growing dissatisfaction with one farm and how they had moved to another where the possibilities of better accommodation and promotion were more realistic. They moved to another farm where they stayed for ten years:

George: The farmer made lots of promises. We went to [him] and told him that we had four children in school. He made promises but he never got so far as making the changes. In 1986 I decided to leave so I went to Valley Farm and I got work as a tractor driver. Karen also got work there and the house had three bedrooms, it was a big house. For the first few years things went well there.

They talked about the last farm that they lived on and their motivation to move to the RDP housing settlement. For sixteen years George worked with pesticides and began to plant vineyards alone on the side of the mountain. He spoke to the farmer about having someone work with him but nothing was done. He then had two accidents in which his tractor overturned. Later the manager of the pesticides division called a meeting for everyone to voice their concerns to the farmer; following this the farmer provided canopies for the tractors. Every year for the sixteen years he was given a blood test and he told us 'not once did I get to see the results'. When he asked to see them the farmer told him that he had seen them and that they were fine.

Next he told us of the final motivations for leaving the farm.

In 1996 I applied for a house here. I had lots of problems with the children on the farm with all the farm rules and regulations. The children were not allowed here and there and they would get into trouble.

I can lorry drive and all that, I'm good at all things like that. But there was a lot of jealousy. The other farm workers were always telling the farmer stories and he believed them and he never came and asked. One day the farmer came to me with an accusation. I said to him 'listen, I am not a child, I am an adult. Bring that man to me so he can say these things in front of my face' but he never brought him.

Q: *What was the story?*

George: I had two teams working under me. There was another supervisor working in the orchard in the rows nearby also with two teams. I noticed that the petrol was low in the tractor. I told that other guy that I had to go and fill up the tractor and asked him to watch my teams while I was gone. Then he told the foreman when he came around that he

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<sup>29</sup> Real names have been replaced with pseudonyms.

didn't know where I was, that I had just disappeared ... so the foreman went to the farmer and told him. Then the farmer found me on the road with the tractor and asked me why I had left my teams unsupervised. I explained to the farmer what had happened but he believed those other people and we had an argument.

I confronted both the foreman and the other team supervisor. He said that he had never said that to the farmer. So I went to the foreman. Each blamed the other so I said, ok leave it. I went home that evening and Karen noticed something was wrong and asked me so I told her what happened.

Karen: He said he didn't feel he wanted to work with these people anymore.

George: It seemed like everyone wanted to stab me in the back.

Karen: He said it looked like people wanted him off the farm and they were making things up.

George: ...I felt that everyone was jealous.

From this narrative, paternalistic dynamics are clearly visible. In the past on other farms, when Karen was pregnant they had got help from the farmer, a house, and work. Work for Karen was seen as helpful, although it has generally been commented that farmers have relied on workers' wives as a reliable pool of seasonal labour (eg, Hall 2001). When things became unsatisfactory on these farms George approached the farmer, but when the farmer did not respond, they moved to another farm where conditions and opportunities were better. On the final farm, George described several instances that highlight the paternalistic relationship. First, he approached the farmer to ask for more protection on the mountain, but the farmer did little to help him. Next, the farmer seemed to consult workers, but though canopies were provided to protect workers from poisons, the farmer still took control of blood tests. Like a parent, he had refused George and his colleagues access to the results, and there was some ambiguity as to whether the results were indeed 'fine' as the farmer had said. George and the other workers were forced to take his word for it due to the power dynamic, and did not take any further action about the matter. The final straw was the accusation from the farmer and the way in which his fellow workers 'stabbed [him] in the back'. Finally, George asserted to the farmer that he was not a child and he would not be treated like one. In the next section I discuss how the benevolence or punishment of the farmer produces tension among farm workers in the forms of jealousy.

### ***Farm as Family***

The discourse of paternalism describes not only the ‘dependence and vulnerability’ characterising farm workers’ relations to farmers, but also an antagonism which Du Toit (1993) argues is inherent in the competition to attract the attention or ‘understanding with’ the benevolent father’s favour. This is rearticulated as envy and competition, and sometimes as resistance, amongst farm workers, resulting often in a vicious circle of informant activities or collusion. As George told me, living on the farm meant coping with others’ jealousies, and these jealousies spilled over into work, to the point where owning a car could cause problems with his neighbours and fellow workers. Collusion, as we have seen in the activity of the union, is rarely successful, as the farmer replied by approaching individuals and brokering deals with each worker individually.

Should the rules of the farm prescribed by paternalism (du Toit 1997, 1993) be broken, farm workers’ work and housing were threatened, and thus the welfare and financial security of the entire family had to be renegotiated. In such cases, as I have already noted, this often led to high rates of movement between farms. Establishing and maintaining relationships within the paternalistic discourse on arriving at a new farm was, then, integral to the survival of the whole family on that farm. In George’s narrative, the farmer made promises that he didn’t keep, but the farm workers continued to work without complaining about their conditions in a united manner. In the end, the security of his job (and thus the security of his house) was threatened by the jealousy of other workers, which he considered to be based on his position in his permanent labour force as being one of trust. The breakdown of relations both with the farmer and with his fellow workers and dwellers led George to feel isolated. Living off the farm, any links that this family chose to maintain with people on the farms have done so with a sense of freedom and independence; doing contract work, he felt that he was removed from the arbitrary nature of the farmers’ authority, and he is much happier working for a contractor. For George it has removed the child-parent dynamic. This does not mean that such relations do not exist in contract teams, and nor does it preclude the authority of the farmer from entering into relations formed in these work relationships. But for George, it was the fact of living *and* working on the farm that made him feel generally insecure and anxious.

For Wilmarie, 24, who lived in a house in Snake Park,<sup>30</sup> and her partner Aubrey, protection from the farmer was operated when she had her child, but the couple had to leave a farm when Aubrey was involved in a fight that had started, according to Wilmarie, because of the jealousy of other workers. Wilmarie had lived there for seven years with her grandparents, had met Aubrey there and had worked for two years in the orchard at the end of their stay there. Whilst pregnant, the farmer had helped Wilmarie by, for example, taking her to the health centre. After she had had her daughter, the farmer had offered her work in the orchard. Aubrey was a code 10 driver, and one Saturday another driver attempted to attack him with a *panga* (a large knife). Seeing this, Wilmarie shouted to Aubrey to warn him, and Aubrey managed to draw his knife and stabbed him. Wilmarie said:

The other people took Aubrey and locked him in a room and went to get the farmer. The farmer talked to the people there and then he was allowed out of the locked room. We went home, and the next day we both went to do our work. The farmer told us that there was no more work for either of us, that Aubrey was a *skollie* [slang for active gang member, con artist, or denoting member of a coloured underclass], and that we must leave immediately. The man [that was stabbed] did not take a case to the police because he admitted that he was wrong and that he provoked it. We went to Raymondts (the local paralegal) and took these dismissals as cases to CCMA. The farmer continued to call us *skollies*. He said that if we ever came back to the farm he would shoot us. I had to leave all my furniture – when I returned to pick up my things it was either damaged or gone. We came to Snake Park and some family put us up for a while and helped us to build this house (August 2003: fieldnotes).

She then told us how, if Aubrey could get a permanent job on the farm he was working at at the time, they might be entitled to a house, which they would accept. But according to Wilmarie, the problem on the other farm had started with jealousy, and she was aware that this might always be the case on another farm:

The problems started there when Aubrey got a code 10 drivers' licence. After that there was a lot of jealousy because he was going to be a driver, which means a better position and better money. There was so much

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<sup>30</sup> An area of housing that has both Reconstruction and Development Programme (RDP) allotments and informal settlements in Grabouw. The RDP became the Growth, Employment and Redistribution (GEAR) strategy in 1996, but in terms of local and participatory governance, RDP fora were set up to deal with issues such as housing, and municipality housing came to be known as RDP housing. The RDP forum idea took its name from the ANC's 1994 election campaign (ANC 1994; cf. Jensen 2004: 190)..



jealousy. When the farmer found out the truth about what happened he was very sorry that he let us go because he had needed us there...If we have to leave and go to the farm we'll give this house to my mother and Yolanda [her sister] will have to stay here with her. I'm not prepared to just give this place up. It is a nice farm, Molteno, but if something happens on that farm then at least we will have our own house to come back to. Everyone knows each other here and there are no problems – it is much nicer [than living on the farm] (August 2003: fieldnotes).

Having been vindicated by the farmer, the couple chose not to return to the farm knowing that the jealousies there were enough to prevent them from going back. The argument may well have continued with recriminations and more violent consequences. They were also aware that this experience is not unique to them or to one farm, and that on even the most ideal farm these dynamics still have the potential to surface. With the family and a permanent RDP plot here in Snake Park they had a contingency plan, so they could still take up tied housing if it was on offer,<sup>31</sup> since it offered extra security for the entire family.

In this example, as in George and Karen's, we see both jealousy and protection at work. The narrative of protection is done through family life, as we see when Wilmarie describes the help she has received from the farmer when she was pregnant. This was also pertinent in George and Karen's early family life, as well as later when they approached the farmer for a bigger house and more work because they have four children. The farmer offered Wilmarie work following the birth of her child, and this was seen as a token of kindness. Aubrey was given the opportunity of earning more money (protection and security for his family), but this caused jealousy and envy. The only recourse to protection from the jealousies of other farm workers was to procure alternative housing, which was scarce, so they turned to the wider family living off or on other farms. The recourse to law with the CCMA case proved unfair dismissal, but relations between this couple and the other farm workers had broken down beyond repair. Ultimately, like the other farm workers I have described, Wilmarie and Aubrey must rely on their own family.

Where farm dwellers share similar experiences with each other, they might stand by each other, as with Pieter and Sarah and those others on their farm that had been

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<sup>31</sup> Physically, most houses on farms are slightly bigger and the internal layout allows for privacy between rooms.

retrenched and threatened with eviction. This is an alternative vision of paternalism. The farmer, however, has attempted to divide and rule by approaching each family separately. As we have seen here, jealousies, envy, recrimination, all threatened this alternative and insecure approach. In the next chapter we see how these relations have an impact on marital relations, with domestic violence a normal part of farm life.

The Du Vries family had lived on Primrose farm for a long time, and had seen many changes on it. Their connection to the farm, to each other, and other farm workers was strong. From Sarah's account it seems that the farmer tried to influence the others through Sarah. Sarah and Pieter's tenancy, though intermittently insecure, is protected by law. Those others who live on the farm have formed relations of interdependency since the protection of the farmer is long gone.

Familial habitation arrangements in a rural squatter camp in the Western Cape have been documented and analysed by Fiona Ross in her MPhil anthropology thesis (u.d 1994). Ross analyses kinship forms through the means that people subsist on and she finds that people in these houses 'without doors' have kinship that operates through very fluid movement and instrumentalism that she calls diffusion of kin.<sup>32</sup> Fluidity of family is a very popular notion for South Africans because as a description it evades the strictures of the past and describes many family relations where there is poverty and increased insecurity. For Ross, it concerns instrumentality. It also warns against making assumptions about the various forms that cultural categories such as family take. To this point it is useful here. For farm workers, whose lives have also been characterised impermanence and fluidity, diffusion of kinship is relevant, and heavily informed by paternalism. Diffusion of kin appears to be operated at the moment of the breakdown in relations with the farmer – for example, for Wilmarie and Aubrey, who move in with her family in the informal settlement.

The persistence of such relations, as Du Toit (1998, 1993) has argued, means that its contestation only operates within its confines. In terms of a 'weapons of the weak' thesis, Du Toit's argument nestles neatly into Scott's thesis, as he argues that the almost impermeable 'black underground' of farm dwellers resist the farmer in small

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<sup>32</sup> Similarities might be drawn from Carsten's ideas on 'fictive kin' (1995).

ways, but remain part of the discourse of paternalism to take advantage of material benefits (such as tied housing). In chapter five, the description of a meeting on a farm shows the ways in which an NGO draws on the strengths of the discourse of paternalism, the quasi kin networks that are inherent in the paternalist script, as a way of drawing the farm workers out of the submissive paternal relations with the farmer. Framing their struggles with their landlords and employers both through human rights *and* through family like networks on the farm is a tactic that uses existing relationships, since it seems that this NGO has recognised that a purely legal approach to problems on farms is limited in its scope due to the power inherent in paternalism. To better see how paternalism creates an organic family like community, one must look at the ways these relationships come about; how resistance as well as acceptance of this discourse form within these small, inclusive communities that replicate family ties even when farm dwellers are not themselves related through blood ties.

### **Law and Paternalism**

The inter-reliance, or dependence of family members on each other, is clearly evident in the above narratives. This chapter has shown how the family unit is part of the discourse this thesis describes. Once the relationship between farmer and farm worker is cut, though, the family must rely on the senior male member of the family to again procure work and housing on another farm, just continually reproducing paternalistic relations. In some cases, families on farms depend on one another, as on Primrose farm, though the actions of the farmer and the dynamics of jealousy and envy mean these are always insecure and susceptible. Whereas movement (away from the farm) might be seen as a means of cutting across the boundaries of farm paternalism for the family in question, it continues the dependence within the family upon wider family networks (this is discussed and illustrated more emphatically in Chapter three). Further, the metaphorical family of the other farm dwellers living and working on the farm is usually cut off from a relationship with those moving away, depending on the circumstances of the eviction. This is essential to maintaining paternalism on farms. If other farm workers are like siblings, the farmer (father) operates this narrative through individuals. Because of misunderstandings, betrayals and jealousies, other farm workers (siblings) cannot be trusted and the family can

only rely on each other and on the benevolence of this, or in the case of a breakdown of the relationship, of another, farmer.

In order to demonstrate these relationships, the failure of solidarity and of the law, I first focussed on how a group of farm workers on one farm attempted to act in solidarity against the farmer by joining a union. I examined how their attempts to do this were thwarted not only by the failure of the union to continue its support, but also through the actions of the farmer. When farm workers attempt acts of solidarity in order to make demands on the farmer, the farmer rebukes them by approaching each individually, and then by taking action on the household. This action precludes solidarity of other farm dwellers, as they will be afraid of the same treatment. The farmer therefore forestalls coherence in collective actions of farm workers, and the law of the farm is far more powerful than the laws of the state which attempt to protect labourers at an individual level.

By highlighting the experiences of one family who are living in two houses on the same farm, this chapter described the ways family life are negotiated on farms, and the way paternalism, through family-like relations with the farmer, is enacted or contested within its confines. As in the introduction, where we see that the narratives of the farmers' relations to farm workers operates through patriarchal lines, this chapter interrogated how workers who have been living on farms for many years manage their personal lives in relation to work, the farmer and their own houses and communities. The lines between private and public on farms, because of the kin-like nature of working relations, are blurred. I turned again to Nikki's relational view (in contrast to the legal view taken by the paralegals) of why his electricity had been cut off, but I also framed this view as a description of farm paternalism and how it outweighs the power of state laws and shows up the deficiencies or failures therein. Additionally, life history interviews and discussion of recent experiences of Nikki's son and daughter in law, Pieter and Sarah, described the life of a family living on a farm and the problems they have faced after the breakdown of their previous relationship with the farmer. One perception - the farmer as benevolent (father) - is replaced with one of punishment, a central part of Du Toit's thesis. For Sarah, the loss of certain perks associated with the paternalist discourse were replaced with jealousies and separations, also part of the discourse of paternalism as farm workers

related to one another. I then considered another ethnographic example of a couple who are living in an RDP area of Grabouw, having decided to leave the farm. The narrative of their lives further illustrates the ways in which work and family are never separate in the context of the farm. Their explanation of their flight from a farm is explicit in their feelings about the sorts of relations that encompass farm life.

Following descriptions of family life on a farm, I discussed the relation between jealousy and protection, both part of the discourse of paternalism; both key to the continuation of paternalist discourse on farms. In other words, both are key to creating the wider family dynamic on the farm that pervades public and private lives. Another example of a couple who previously experienced protection from the farmer, but were forced to leave because of perceived jealousy of others, showed how even where legal representation provided some redress, relations on the farm had gone to far, and the couple wanted only to rely on their own family at that point.

In each example I have provided, paternalism as described by Du Toit and others is evident in people's life histories, how they have related to farmers and to other farm workers. At the moment of eviction, or threat of eviction, even when law is involved, paternalism in its most punitive state continues to operate, and even when workers have 'security of tenure' they do not feel secure in their houses as they have lost the previous protection granted by the farmers. If human rights are supposed to empower these actors, they only do so within the terms of the law as it is written, and not on the level of everyday reality. Living on the farm becomes so fraught with anxiety that the alternative of living off the farm becomes attractive. In most of the examples above, the moment of a breakdown in relations between farmers and workers do not translate into purely legal relations, but into a breakdown of former relations. Farm workers who remain part of the farm, are distanced from those farm workers who are still favoured by the farm workers as punishment.

In the next chapter I focus on the ways that women are doubly subjugated by paternalism on farms, and how laws, particularly ESTA, do little to address these inequities. Dynamics continue to be governed by the situation on the farm. Within the discussion I look particularly at domestic violence on farms, showing how paternalism has had the effect of offering some limited protection to women who

were experiencing violent relationships, and moreover how relations therein reproduced it. I also examine how the family like structure of farms, as described in this chapter, blurs the boundaries between the private and the public.

## Chapter Three - Paternalism is Gendered

Women have a particular place in the racialised hierarchy that is engendered within the paternalistic discourse of governance that organises farms. Their positions as packshed or unskilled labourers<sup>33</sup> might be said to be marginally better than those of women doing farm work who do not live on the farms, though both are characterised by dependency on farmers and partners. Women are dependent on their fathers or male partners for work and housing, and this is dependent on the relationship the father or partner has with the farmer. Scully (1997) describes the position of women on farms as resulting from the transition from slave labour to wage labour, when the practice of providing housing as part of a remuneration package became a common feature of domestic farm management. It offered a dependable pool of non-permanent labour that could be drawn on when necessary.

Developing on the previous chapter, in which I documented how the family on the farm is situated within the larger farm family, I turn here to women's positions in both settings. Focussing on two ethnographic interviews with women who have lived on farms for most of their lives, I examine the ways marital relations are subject to gendered hierarchies that are enacted both within the family and within the farm, with other farm workers and farmers influencing the actions that farm dwellers take when they are experiencing problems in marriage or in their work. Both examples that are the ethnographic focus of this chapter document domestic violence in the context of the farm. On the one hand, women are tied ultimately to the farm, but as I outlined in the Chapter One, the paternalistic narrative of protection is also at work. However, protection is fragmented and sometimes contested. It is dependent on the particular farmer, and the relationship he has with his farm workers; it is dependent on that relationship not breaking down.

Domestic violence is common among farm workers, and the incidence of alcoholism is also well documented, which exacerbates the problem. In chapter five, I look at legalising moves in the forms of testimonies that produce the concept of 'marginality' as an active, empowering concept (not merely one that is used by academics describing farm workers' and dwellers' lives). There, I recount an event in

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<sup>33</sup> At best; the work that women farm dwellers and workers do is examined further in this chapter.

which the act of domestic violence is dramatised in order to show other farm workers the immorality of violence in the home, and that there might be other ways to deal with arguments. In the drama, the violence takes place in front of other farm workers, who are instrumental in showing the man that his action is wrong. This is not only a way of publicly denouncing the act, it is also a testimony to the reality that farm life is ultimately public, promoting the public nature of the event into protection that does not come from the farmer, but instead, from other farm workers. In this chapter, I first show how the public nature of family life narrates two male authorities; that of the husband and of the farmer. The effect is of double subjugation of women, which is well documented (see Meer, 1997; Orton et al 2001: 471-3; Greenberg 2004: 8).

For the women that I write about in this chapter, their experience of violence in the home determines their movement from farm to farm, and in each case the violence is not tolerated by the farmer. Their movement away from farms where the violence of their marriages has been publicly denounced (but no legal action was ever taken) can be a means of challenging paternalism, of avoiding the authority of the farmer (in the form of protection or punishment) while submitting to marital authority. This chapter particularly shows the ways in which paternalism oppresses women, through the double subjugation from not one, but two authority figures. Where these are not in line with one another, women live in heightened insecurity and danger.



## **Domestic Violence**

For many South African women, domestic violence is part of married life; it is evident in all classes and all so-called racial categories. For female farm dwellers, domestic violence is as much a part of their lives as it is for other women, but their experience of domestic violence is particular because of the public narrative of family life, and because the causes of domestic violence are intimately related to life and work on the farm. The nature of paternalism as a publicly enacted discourse and as related to the work of the farm means that family troubles for farm workers are inherently public. Domestic violence is not only public, but is situated in the entire social and work life of the farm. For Serafina, protection from the farmer and movement are key to her life narrative in avoiding domestic violence. She is also reliant on her mother and father to look after her children. For Maria and Keith, the farmer is key not in protecting Maria, but in making them act unanimously in the face of intimidation, retrenchment and threats of eviction from the farm owner. In the past, when there was a fight between a man and woman living on the farm, the farmer would often ask them to leave. The ethnographic example of Keith and Maria underlines the ways in which private space (the house) and public space (the orchard or packshed; the workers' housing), and behaviour in each, are not separate. However, their determination to remain on the farm is due to legal protection in ESTA, and their violence towards each other can be seen to bind them against the authority of the farmer.

### ***Serafina***

Here, I look at the life history of one woman, Serafina, who had been threatened with eviction from Primrose farm, but who was automatically protected by ESTA as a permanent occupier. We met her in the context of legal discussion and went to the farm where she lived to interview her. We got to know her very well and discovered that she actually lived elsewhere. The subjective historical narrative that we eventually procured is interesting in the manner that Serafina managed to resist several legal and social intrusions; how she kept distance from her partner who had been abusing her by getting help from a farmer; and how her partner in turn gained help from another farm worker to get access to her when he had been evicted by the

farmer. She allowed us to interview her on the farm where her son worked, thereby avoiding the intrusion and gossip of the people who she lived with on the farm that her own house was on. Much later, when we had got to know her, her family, and even the farmer that her son worked for, quite intimately, she also purposefully resisted Walter's tendencies to see things in legal terms. In fact, when she told us about particular problems she was having, she argued with Walter when he attempted to direct her to particular means of redressing such issues, and questioned the point of such activity. When this happened, I was struck by the way that she seemed to want a practical way of dealing with immediate concerns, something that she saw the law or state interventions as inefficient in dealing with; she would still go and see the farmer about his contributions to her disability fund rather than phone the Workmen's Compensation [sic.] phone line as Walter advised her to do.<sup>34</sup> She was quite aware that there were problems with this welfare scheme and she also wished to maintain a relationship with the farm owner where her house was. Her life history illustrates the way in which women particularly must move around and negotiate key life decisions with family that occupied more permanent abodes. It also highlights the occurrence of domestic violence, as well as fluidity of family organization in the face of adversity. Most importantly, it highlights how paternalistic protection was ineffectual when it came to domestic violence, as the man's authority in the relationship was final.

Over the course of the previous 18 years, Serafina had lived on several farms. When she was 13 she had left the farm where her family lived, and went to work in the Cape (Cape Town and its outskirts). As one of 16 children, this was essential for her family, and she said of her first job as a nanny, 'I was also a child looking after a baby. I was the house child'. When she came back some years later, with a son, she met a man with whom she would have two more children. She told us about the domestic violence that characterized her relationship with her partner and how on one occasion the farmer intervened and ordered him to leave the farm. The farmer

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<sup>34</sup> Walter also told me at other times how unreliable this phone line had been when he was assisting people in Grabouw with claims as the local paralegal. See chapter 6 for discussion of paralegals in relation to rural legal activism.

had sympathy for Serafina<sup>35</sup> and she was allowed to stay in the house. Her '*man*' (lit. Afrikaans for husband, often used to describe male partner whether married or not) returned to persuade her to leave the farm with him in order to move to another where he had found work. At this point he did not succeed in taking Serafina with him, but it was in this way that Serafina's partner had been able to continue abusing her by moving from one farm if pressure was put on him by the farmer. He left on the farmer's orders and stayed away for some time, but one day some of his friends had let him in and he had come to see her, drunk. She described how he had thrown things at her in her home. It was then when she sent the children to her father, when she realized that it was too dangerous for them to stay. Her husband was thrown off the farm again, but because his violence against her was the result of anger with her for staying in their home rather than accompanying him, when he asserted conjugal authority, she went with him to a new farm, feeling that she had at least protected her children sufficiently. She told us, 'he said, "you are my wife, you should be with me"' and she had felt that she had no choice in the matter.

Nowadays Serafina has a safe house on a farm. She lives there on her own and has done for some years. She was threatened with eviction when a group of people joined a union and were retrenched for it (see Chapter two). She saw herself as effectively separate from them, however. Her threatened retrenchment and eviction was related to redundancy more than to her participation in industrial action. Though she was threatened with eviction, she is protected from eviction by ESTA as she has a disability caused by an accident on another farm, making her a 'permanent occupier' under the law. Like many of my farm worker informants, she had been injured at work. Since she has a disability, unlike her neighbours on the farm, Serafina is no longer being threatened with eviction since the first threat proved itself, through advice obtained from the local paralegal, to be illegal. So she lives in the house and she still occasionally looks after some of the children from the farm when their mothers are at work in local packsheds.

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<sup>35</sup> Farm owners, in such paternalistic relationships, can be both benevolent and forbidding, sometimes either or, in most people's experience. For instance, discussing a farm owner on a farm where they had lived in the past, many farm workers and dwellers would exclaim, 'that Boer was bad!'

She was no longer socially involved with the other farm workers: ‘At weekends they get drunk and talk too much, make gossip’, she said. She only stayed at her house every other weekend in order to make sure that the house was clean and to guarantee against the farmer changing the locks due to nobody staying in the house.<sup>36</sup> The apparent security guaranteed through ESTA, then, is still uncertain as Serafina has seen other permanent occupiers threatened with eviction or intimidated, even after their status was translated to the farmer. Though this was her house, she also lived at her son’s house on another farm. Serafina’s son, 28, was foreman on a very small farm recently bought by a European man. In his house on this farm lived Serafina’s sister (20) two of her daughters (23 and 15) and one daughter’s two young children. Serafina asked us to come and talk to her on this farm instead of at her own house, because, she said, everyone would gossip about her and she didn’t want them to know her business. We visited her several times there and it seemed as if she was not living in her own house at all. She sometimes ran a crèche for the children of her own family and the children of the contract (seasonal) workers that work on this farm.

Serafina preferred being with her family on this small farm where the farmer saw himself as an equal and a friend and where there are fewer intrusive neighbours. The family was close, but the son and daughters of Serafina had not lived with her much as children; they had mostly grown up with their grandparents. She now depended on her son for this arrangement, and her son depended on the farmer for work and the farm. The friendship between this farmer and the family could be seen to be outside the strictures of paternalism (the farmer told us he could not understand the way other farmers treated their workers), except that such closeness between farmers and foremen has not been so unusual in the past on many farms.

### ***Domestic Violence and the threat of eviction: Maria and Keith***

Below is another example of intervention of a farmer, but in the following case the intervention was unwelcome, and the farmer did not offer help, but as has often been the case in the past, confronted the domestic violence with retrenchment and eviction.

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<sup>36</sup> According to ESTA, if the occupiers vacate a house for more than three months, the owner can change the locks and legally evict the occupier and their possessions.

Having got to know Sarah and Pieter Du Vries, they would often introduce us to friends on other farms that were experiencing problems relating to tenure insecurity and a breakdown of relations with their employers or former employers. Sarah knew them through the church or had kept in touch with old friends from farms she had lived on previously. On one occasion, Sarah asked us to visit a couple on another farm, Keith and Maria, who had at one time lived at Primrose farm. She also asked us to visit another woman on living on that farm who had been having problems with the farmer and had had her belongings taken away by the Sheriff of the Court when she had refused to leave on the orders of the farmer. We had heard from this woman about how Keith and Maria were having troubles and had also been threatened with eviction.

The farm worker housing was set on a steep hillside on terraces. It was a big farm and there were probably between 60 and 80 houses on the farm. Their proximity to one another meant that yet again, on this farm, farm workers had little privacy. There was a social club on the farm but those I spoke to chose not to go there now that they had been excluded from work; their exclusion from work and threatened eviction had, it seems, cut them off from the society of the farm.

We visited them in their home, where we often found Maria on her own since her husband was out doing contract work. She told us briefly that the farmer had first dismissed Keith from his job as a supervisor. He had then dismissed her from the packshed. When we asked why this had happened she said she would rather discuss it in the presence of her husband. We returned to the farm and found her on her own several times before we met Keith. Each time she would tell us the most recent contacts with the farmer, for example, a letter giving notice of eviction, but explained that it would all become clear that the original dismissals had been unfair. Since the couple had already been to the local advice office about the dismissals and were awaiting the CCMA hearing it was not so urgent that they received legal advice, or that we should be privy to the details. The story of their dismissal, though, seemed mysterious at first as Maria wished to only tell it in the presence of Keith.

When we finally found the couple together in their home, I was quite surprised by the candid manner in which they told us about their experiences, and then less

surprised as I realised that the translation of something personal had become integral to the CCMA case; that the importance of their talking together represented not so much Keith's general subjugation of Maria, if indeed this was the case, but of presenting a united front in legal terms.

One Sunday there had been a party on the farm because Monday was a public holiday, and everyone had got very drunk. That night Keith and Maria started an argument at the party that continued when they got home. They told us that this was a one-off, that they rarely argued, and that the rage that ensued was fuelled by the amounts of alcohol they had drunk. They had screamed and shouted and Keith had thrown a bottle at Maria. She told us that they got into a physical fight and she had also hit Keith. On Tuesday when Keith returned to work he had been told to go home. The next day he went to see the farm owner to find out the reason for this and had been told that there had been reports that he had turned up drunk for work. The farmer had also heard about the fight and said that he would not tolerate this kind of behaviour on his farm. Keith argued that he had not been drunk when he arrived for work but the farmer refused to believe him, going on the word of a supervisor who had informed on him. Maria's work in the packshed was stopped when she went to work that day. 'It was because the neighbours told the foreman. We occasionally have arguments like this but they are never violent in the way this one was. We both know that this was wrong, but it is our personal lives and it shouldn't have affected our jobs, should it?', Maria postulated. Walter answered her saying that it would likely prove to be unfair dismissal, particularly in her case; and that his being drunk at work would have been difficult to prove since he had not been breathalyzed, or found to have breached health and safety law. He also dismissed the eviction letter saying that the farmer could not under the terms of ESTA begin eviction proceedings until the CCMA case had been settled. This letter could further be used as evidence of intimidation in the negotiations, or should the case go to court. The security of Maria's job here appeared to rest on that of her husband's, but under the law her job would be protected, he added.

Alcohol, a defining feature of farm life and one that contributes to social problems and farm violence, is also a health and safety issue in terms of the workplace. By claiming that Keith had been drunk at work his dismissal had seemed justified, but

the farmer had uncovered the real reason for the dismissal: domestic violence and the disturbance it had caused Keith and Maria's neighbours, which had also been divulged to the farmer. As shown in previous chapters, a discourse of betrayal is operating here, though we were not told if there was any personal reason why anyone might inform on Keith. It seemed, then, that Keith's heavy drinking had been used as a cover for some more personal reason - probably from another worker. Here again, then, we see the way that paternalism is played out between farm dwellers as siblings.

It should not be underestimated how often such manifestations of paternalism are played out. But far from being a benevolent form of paternalism, the farmer's action is punitive and attempts to sever the relationships of dependency and protection. In this case the couple further polarised their private life away from paternalism by claiming that what happened in their home should not have been considered in their dismissals. Domestic violence on farms is not private but is either tolerated and ignored. Alternatively, as in this situation and that of Serafina, its occurrence leads to the involvement of the farmer; but in this case the farmer's involvement had not been requested by the victim.

### **Paternalism and the domestic farm: Women's double subjugation**

There are several themes arising from the two ethnographic examples provided above. Prevalent, of course, is the issue of domestic violence, although this is certainly not unique to the farms of South Africa. Domestic and sexual violence is a social problem of gigantic proportions.<sup>37</sup> However, the effects of domestic violence on other relations in the farm reflect the merging of public and private in the paternalist discourse. Further, one might add that domestic violence, as it has been historically tolerated or punished within the realm of paternalism rather than directly by the state, has been caused by relations on farms. Because of the blurring of boundaries between public and private, domestic violence is not only public, but to an extent, tolerated. The high consumption of alcohol on farms, coupled with frustrations inherent in paternalism, are prime causes of high levels of domestic violence on farms. There are other themes that link the life histories of all of the women that I met and interviewed, and these can be clearly seen in the ethnographic examples above.

First, the interdependence between kin is notable. In Serafina's case, this can be seen in the way that her parents and father throughout her life have taken care of her children on the farm where they lived when it became difficult for Serafina to do so. The fluidity of the family is a prominent theme. When I met her, for example, she lived with but also officially did not live with her sister, son and daughters. Keith and Maria showed solidarity as a family when they were threatened with eviction (as punishment), and they insisted that domestic violence was mutual and only occurred once between them.

Because paternalism informs everyday life for women living on farms, family life is often articulated in humiliating public ways (particularly with domestic violence). Women have ways of actively producing separation of private spheres of their lives which do not conform to either the narratives of paternalism or the way of seeing family life induced by the failures of this law, but which might be seen in response to these factors. In this way they are part of paternalism and simultaneously productive of the hidden side of farm life that Du Toit speaks of (1998). They conform to past

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<sup>37</sup> For instance, the latest statistics on rape show that one in three women in South Africa have experienced rape or sexual violence (CEDAW II).



practices of survival and resistance in the face of paternalism and poverty, by defining distinct private spaces away from a discourse that has apparently pervaded every area of social life. Such a reframing of private spaces provides a narrative that ‘unsettles conventional assumptions about farm workers’ (Rutherford 2001: 15). The ways in which some of these women articulate this separation is interesting. The narratives produced somehow challenge paternalism’s control over life and at the same time make use of protection from the farmer if it is available. Women continue to conform to the understandings enshrined in the pervasive paternalistic contract until relations between them and the farmers become frosty. At this point personal differences between farm workers reproduce informing practices, and the farmer terminates employment and the tied provision of housing. The way the domestic farm operates, including the double subjugation of women, makes dependence a key part of life on farms.

Private space is pervaded by the farm and ultimately by the farm owner, but at times resistance to this is as much a part of the paternalist discourse as is adherence to it. When Serafina was beaten up by her partner, for instance, the farmer intervened in a benevolent way, protecting her by asking her husband to leave. To an extent, Serafina depended on him for protection. However, her partner was able to enter the farm by getting one of his friends to let him in. This put Serafina in danger, but because of the power inherent in the marital relationship, Serafina submitted to her husband’s wishes and left the protection of the farmer (which had proven to be limited) to go with her husband to a farm where the farmer did not know them or the history of violence in their relationship. Yet again she depended on her husband for employment and housing. They cut out the influence of the farmer on their private relationship, leaving for another farm. Eventually, Serafina left her husband and got a house on the farm where she now ‘officially’ lives.

Andries Du Toit has articulated such spaces of resistance as a ‘black underground’, and argues:

The moral codes of the ‘paternalist contract’ are a source of protection as well as oppression and do have real legitimacy on the farm; and the discourses of dissent are discontinuous, fragmented and internally contested’ (1997: 155).

These are not homogenous narratives of resistance and are not always necessarily opposed ‘to white farmers’ power – but in times of need they give shape and backbone to *hidden and subversive networks of solidarity, mutual support and shared knowledge*’ (*ibid.* emphasis added). This is drawn upon powerfully and in full knowledge by the Women on Farms Project (see Chapter five). In the past, these networks have been extremely fluid and fractured as allegiances and personal arguments have upset relations on different farms over the course of people’s lives.

In each case described above, the intervention was made by the farmer with little or no discussion of the matter with the victim and even Serafina was not offered any other form of help by the farmer. Serafina was put in a dangerous position, and had to send her children to live with her parents while she went with her husband, a third form of dependence.

The farm might be described as itself like a large ‘organic family’. This metaphor returns with some force in this section, and indeed in the remainder of the thesis. Each farm adhered to its own set of rules. It is as this organic family that paternalism has primarily been seen to function. Since slavery, the farmer has acted as guardian over workers living and working on his farm. The level to which welfare or care is given has always varied.

In the lived experiences of farm workers, particularly dwellers, the family has been inscribed with quasi-institutional, public meaning; one’s fellow workers and farm dwellers are in one sense one’s siblings; the farmer plays the part of the father and is invariably punitive and/or benevolent and always patronizing. The effects of the subjugation of workers in this way, particularly of women, as well as historical lack of access to education, has reproduced many social problems on farms, such as violence, alcoholism, petty squabbles leading to evictions, and domestic violence.

In addition, coloured farm workers now face competition for jobs that historically were protected by race. Permanent jobs are fewer as farmers outsource to contract and (mainly women) seasonal workers (Barrientos and Kritzing 2004), and jealousies and rivalries become more persistent and violent. For instance, the stories of jealousy in the previous chapter illustrate this well. On most farms a core of permanent workers who are mostly coloured, Afrikaans speaking men remain, and

daily life for them is negotiated through paternalism. Further, these jobs are now increasingly insecure, and as such household finances and relations are in turn affected. Women most often gain permanent employment indirectly through their husband or partner, or nowadays more often do seasonal work (which is also usually procured this way), and do not usually form part of the core of permanent labour:

The persistence of gendered paternalism can be explained by the ongoing benefits it offered to farmers and male farm workers. It satisfied the economic and political interests of the farmers by ensuring the provision of a dependable, stable and subservient workforce, permanent and seasonal. It also helped support unequal power relations in the coloured family, as women were dependent on their husbands for their livelihoods and took responsibility for the majority of reproductive work (Orton et al. 2001: 472).

Many of the women I met in Grabouw worked in packing sheds, often off farms. This often involved night shifts, and women organised child care with other women on farms who were also doing such shift work. In personally arranging childcare to accommodate shift work, families are necessarily involved in one another's lives, since child care arrangements are informal. An example of such informal childcare relations is given in the previous chapter. Yet again, this demonstrates the merging of public and private, the kin-like relations on farms, and the operation of dependency therein.

Domestic violence towards women is rife, and even when this is not the case, the discourses of paternalism and patriarchy characterised by a lack of property and labour rights for women in the past endure in social practices today. Domestic violence informs an important aspect of family life on farms that has been legitimised by past paternalist discourses; indeed, as was seen in the previous chapter, general violence is common on most farms. It continues to be a problem that is inscribed in farm paternalism. At various points, the farmer has offered protection to women who have been abused; at others (for instance, for Keith and Maria), the farmer's involvement in their domestic dispute threatened the couple's jobs and house; at no point had the police been called, nor was there a warning that they would be in either case. Therefore the level at which farmers get involved varies, but domestic violence is clearly still considered to be a domestic, farm matter. Maria and Keith's case tells us how the incidence of domestic violence might be reported by

other farm workers, though apparently not with the protection of Maria in mind. The reason provided for suspending Keith and ultimately for threatening eviction, however was that Keith arrived to work still drunk. At no point did anybody tell me that the police became involved in a case of domestic violence; only where the families were evicted from land owned by the municipality was domestic violence dealt with through legal means (and this at the request of the victim herself), and the farmer no longer had any part in these tenants lives. Domestic violence is seen as private, domestic, and fully inscribed with paternalism. NGOs such as the Women on Farms Project provide education and encourage domestic violence and rape to be viewed as wrong, insisting that women who have been affected should share such problems with others on the farm (see interview with Eveline, Chapter five).

In the region under consideration, it was mainly coloured farm workers that were affected by eviction, since it was their entitlement as permanent workers under various apartheid laws that tied employment to housing on farms. In the course of modernising the agriculture sector during the 1980s and 1990s, it had become economically unviable to house farm workers. A permanent core of coloured farm workers were still commonly given housing with employment, but during the mid 1990s evictions of these families were becoming commonplace. The ESTA law was enacted to address the arbitrary nature of this trend, which was denying rural indigents rights to equality, dignity and socio-economic rights, as had been provided for in the new constitution of 1994. But due to this tendency of the law to represent farm workers who are part of this cultural and racialised group -coloured - when people negotiate via this law they tend to accept given public narratives about what it means to be coloured (see Chapter nine), and these understandings persist. The 'hidden transcripts' (Scott 1990) that I describe are more than just resistance strategies: they also inform the changing nature of the family forms.

As has been seen in this chapter, the effects of paternalism have been double subjugation, gender violence and dependence. Economic dependence is further highlighted and discussed in the following chapter, where I also introduce the concept of marginality, as it has been discussed in academic and development discourses.

## Chapter Four - Paternalism as Poverty

This chapter foregrounds how families survive on low wages, the poverty experienced by farm workers, socially and economically, and also in terms of access to resources. It focuses on how tied housing and employment practices became one of the key historical features of paternalism on farms. A key feature of paternalism is insecurity for farm workers. In the ethnography analysed in this chapter, a situation of perceived increased insecurity leads farm workers to seek assistance from a union, which further undermines the trust between them and the farmer. This in turn leads to increased insecurity as farm workers face retrenchment and eviction. For other farm workers described in this chapter, the discontinuation of the paternalist relationship puts them in a position of more permanent insecurity. Yet, as I argue below, even living “off farm” appears to reinforce, by reconfiguring, paternalism. Several ethnographic examples are described to show how dependence and poverty are manifested on and off farms, and how with recourse to law, some farm workers consider themselves no better off.

The conditions of housing, dependence and changing employment practices, reproduce poverty, which is primarily feminized (Meer 1997). Again, gender is key to the analysis, as women tend to be employed as seasonal labour or in packsheds, whereas men have traditionally occupied more skilled jobs and formed part of the permanent core of labour on farms. This situation is changing rapidly, but despite the introduction of minimum wages for farm workers, the wages are further differentiated as casual labour becomes increasingly feminized. In terms of wages, casual labour is often remunerated at piece rates, or low hourly rates, meaning overall wages are far lower than the recommended minimum wage for the sector. This employment practice is increasing with the reduction of the core labour force which is being replaced by seasonal labour through contractors.

Additionally, women have always had to do household work and raise children until they are old enough to begin working themselves. Social welfare is dependent on whether this farmer is ‘a good or bad boer’, and is seen in terms of levels of protection. Social welfare is therefore restricted to farms where schools and health clinics have been introduced, or is dependant on the farmer providing transport to

towns for visits to clinics etc (in the literature, this is neo-paternalism). As farmers increasingly evict workers and hire off farm labour, welfare provision is changing, and those that are left on the farm face increasing marginalization from government welfare. In academic discussions, paternalism produces racialised and gendered poverty, and inequality of access to resources. Paternalism, in its more recent forms, has therefore reproduced poverty, and increased access to legal resources for farm workers is in effect doing little to improve standards of living as farmers react to the encroachment of rights claims by cutting back on permanent workers, previously the one guarantee of some security for coloured farm workers. Increased competition for work between on farm coloured labour and off farm African labour has also introduced racial competition, reproducing the conditions in which paternalist practice flourishes. Provision of housing tied to work is no longer guaranteed, so the competition for trust with the farmer increases, reproducing the instability of relations between farm workers living on farms.

### **Women's work**

The descriptions of womens' lives in Chapter three illustrate well the options that women have had in the workplace. The continuation of work on the farm is dependent on both a couple's own private relationship, and on the husband's work relationship with the farmer, as it was for Keith and Maria. Maria's job was secondarily affected by the report of him being sent home from work and the rest of the story that was told to the farmer. The farmer had and has always had, the authority to become involved in domestic situations. As in the past, the farmer sees it as his right to rid the farm of 'trouble makers', but Keith and Maria are arguing not only that the dismissal was unfair, that because of this they should be allowed to stay in their house at least until this was proved. Even without Maria losing her job, the original contract had been made between Keith and the farmer, and staying in the house was only guaranteed if he continued to work on the farm. ESTA protects women whose occupation of the house depends on the husband, and sees them as an individual occupants (*okkupeerders*).

For most families, women have the double task of taking paid work as well as being responsible for household work (Orton et al. 2001: 272) (though for many families the same could be said for children), but women tend to be given less skilled work,

such as picking, sorting and packing, which is only plentiful for a few months each year. On most farms, a small, core, permanent and mostly male workforce does the more skilled work such as pruning or tractor driving, which is not only skilled, but involves trust as workers operate alone for good lengths of time. During harvest, a supplementary workforce is provided by women. Formerly, this force was drawn from the women of the farm, but nowadays this supplementary workforce – largely female in composition – is also contracted out. This period may only last for 3 months. Women either have to rely on a man for a permanent income, or find permanent work themselves, which was never traditionally given to single women. For the remainder of the year the family must either rely solely on the wage of the male worker, or the woman finds work at other packsheds in the area.

Hall et al. provide the following statistics on farm labour in South Africa:

The commercial agricultural sector provides permanent jobs to about 640,000 people. Another 300,000 or more derive incomes from agriculture through seasonal, casual and contract work. Agriculture is the sector that provides the largest number of jobs in South Africa (Statistics South Africa, 1996). The Centre for Rural Legal Studies (CRLS) has found that, in the Western Cape, *every farm worker's income supports another five people's livelihoods* (2001:2, emphasis added).

The final statement sketches something of the extent of financial dependency in which farm dwellers are implicated. Hall et.al. (2001) further add that the average wage is below R600 a month, an average that, in real terms, has changed little since the introduction of a minimum wage (of R650 a month) in the agricultural sector since 2002. This amount is less for women, particularly if they work as hired seasonal labour. Though it is against the law for the farmer to pay less than the minimum wage, the Department of Labour found it difficult to investigate underpayment, and the intervention of the contractor may further complicate investigation.<sup>38</sup>

Most of the women I interviewed were farm workers that now worked in packsheds, particularly during the months when farm work is not available. Some farms have their own packsheds; one I visited was a large packshed on a large farm in Theewaterskloof, where fruit was being packed to be sent to Europe. In order to keep

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<sup>38</sup> Though sociological investigation was being carried out on contractors and contract in farm work in Grabouw whilst I was working there (Barrientos et al. 2004).

a steady year round supply to European, particularly UK, supermarkets, the apples are kept in cold storage. For at least 6 months of the year, the packsheds provide work for mostly women from surrounding areas. Many of these women either lived on farms or had done so in the past. The big packsheds employed a high proportion of both black and coloured employees; on large farms, the packsheds would be made up also of black and coloured women, some living on the farm, some living in townships attached to the local hamlets. On out of the way farms, the packshed workforce consisted of women living on the same or on local farms.

The rates of pay were fairly poor, and most women living on farms told us they struggled to make enough money to buy essential commodities. For those women whose partner had left the family home, or who coped alone with children, their weekly wage barely covered hygiene and food commodities at a bare minimum. Perhaps not living on less than \$1 a day, these women struggled, and had to rely on the help of relatives or friends. Women's dependence on men for financial and domestic (provision of tied housing) security leaves them doubly economically marginalized. Conversely, for those seeking work, being in a relationship with a man provided an advantage. The contract usually incorporated use of women and children of the household for seasonal work. A workforce comprising permanent and semi-permanent workers living on the farm was guaranteed by this arrangement, and the women of the households were guaranteed work for some months, but were expected to look after family and house for the remainder of the year, the family depending on one wage out of season. For unmarried women, housing on farms was not guaranteed, though on some farms hostels were provided for single women, as well as for single men. During apartheid, coloured people were guaranteed work over black Africans through national legislation (the Labour Protection Act), at the same time as Blacks were being forcibly evicted and moved to the homelands such as Ciskei.

It is argued that one of the main external factors for the feminization and casualization of the permanent work force is the global value chains guided by European, mainly British, supermarkets (Barrientos and Kritzinger, 2003). The power that these supermarkets have is well documented and the commonalities of the experience of South Africa in terms of supply chains have been compared with the



Chilean wine and fruit export. In each case, women farm workers are at the very bottom of the value chain<sup>39</sup> of apples, for example, sold in one of the top five performing British supermarkets (*ibid.*).

### ***Campaign for minimum wages***

At a meeting of the Farm Worker and Dweller Coalition in 2002, there was much discussion of sectoral determination, which was a series of pieces of legislation passed to determine a minimum wage for each sector of employment in South Africa. For agriculture, this became a sticky issue during the time that I was in South Africa. It was predicted by some activists that the minimum wage would serve merely to encourage further retrenchments based on operational requirements, and ultimately increase evictions even further. At the meeting, there was a proposal from the Employment Conditions Commission (ECC) that NGOs and organised labour should give their submissions on what amount they considered would be suitable for the minimum wage for farm workers. The problem of fixing an amount came down to the issue of equality, as can be seen in the following extract from my notes taken from the meeting. A period of consultation with farm workers had been undertaken by unions all over the region, it was announced, but:

The R400 a month minimum wage proposal was scrapped as this was insulting to farm workers [unsure of who is proposing this to who?]. The ECC is not really in favour of across the board same minimum wage. The ECC confirmed that premiums will be paid to seasonal and semi-permanent farm workers. They don't know how much those premiums will be yet and they want us to tell them. If you pay a young seasonal female farm worker more than a permanent male farm worker in premiums then it is discriminatory against him but if you don't pay them the same then they will be angry. We must put ourselves into the farm worker's shoes.

Later in the day the WFP brought up another campaign for minimum wages. They had begun a petition and had included pamphlet in the pack that we had been given at the beginning of the day. They had also been planning activities. This was a campaign for a minimum wage to be set for casual and part time workers, the majority of whom are women. Indeed, at each of the WFP rallies that I went to, this campaign was very much in evidence (see photograph, p. 153).

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<sup>39</sup> The 'value chain' denotes the chain of supply from farm to house. In this case, the chain starts with the shopper in an industrialised country, and ends with the person picking the fruit, following lines of distribution and sourcing, pricing, down to employment conditions and payment of employees.

The main aim of sectoral determination had been to increase pay levels of all sectors up to the relative standard of living in South Africa, and to redress wage imbalances based on race that had continued after the end of apartheid. The minimum wage for each sector (e.g. teachers, municipal workers etc.) was to be determined through consultation with stakeholders (employers, employees and unions) from each sector. The issue of determining a minimum wage for seasonal farm workers was problematic because seasonal workers were casually employed at piece rates. For the NGO and unions concerned with the issue, the standard had to be relative to the minimum wage of permanent, skilled labour. The semi- and unskilled labour involved in seasonal work should not therefore be paid more than or the same as permanent skilled work. But the question of equality of access to work was also an issue. Should the wage be set too high for seasonal workers, the sourcing of labour might become even more casualised; were it set too low, it would be unfair on the female workforce. Further, the description shows that should the minimum wage be set too high, it would increase retrenchments and evictions. The fine balance of these debates would eventually determine not only the rates that women earned, but also their security of work and housing.

The issue of equality between women and men would not, it appeared, be solved by sectoral determination, as it did not address the unequal conditions of employment already in place. It seemed that another set of laws would likely undermine security for South African farm workers.

### **Family dependence for resources/ dependence on farmer for help**

Dependency not only describes the financial dependence of farmworkers' families on them, or that of farmworkers on farmers. Other forms of dependency include protection or favour, for example, the dependence on the farmer for housing and its maintenance and services, a crèche for young children, and a primary school education for their children; and for various forms of welfare provision, such as access to a clinic. All of this is done at the expense of independence. The unequal authority and control that farmers have over the lives of farm dwellers is inscribed in paternal authority and the law of the farm.

In the previous chapters I have described how kin have had to rely on each other for work and housing, particularly at the point when relations with farmers seem to have broken down. I also described the loss of perks, from being driven to the doctor to Christmas gifts and braais, and how farm workers are nostalgic for such favours. The nostalgia reflects a more general loss of relation that runs deeper. These farm workers became worried about retrenchments, evictions - so loss of perks was only the tip of the iceberg. All of these concerns led the farm workers to approach a union, on which they found they could not depend at all. Further, their involvement in this union lead to retrenchments rather than offering them protection from them, and lead to insecurity. It is easy to see with this case why farm workers have distrusted outside help in the past, preferring instead to negotiate individually with the farmer.

Insecurity, then, is a key part of paternalist dependence, yet it is also a more permanent result of being cut out of the paternalist contract. Paternalism is insecure because though it variously offers protection in the forms of permanent income and housing, the relation could be severed at any time. As ESTA makes it increasingly difficult to procure tied housing on farms, families increasingly have to move away from farms and face the increased insecurity of living in informal settlements, of travelling far for work and of the lack of legal protection associated with contract and seasonal work.

### **Living off the farm: insecurity of contract farm workers**

In spite of the positive experience of George and Karen, whose flight from a farm I discussed in Chapter two, many farm workers who live on farms or who have lived on farms find the housing an important benefit, not only for the sense of community but also because it is cheaper than living off the farm and often safer. In spite of reports of farmers subtracting such services and rent from wages, creating a further financial circle of dependence, according to Kritzinger et al. (2004), standards of housing, services, safety, security and well being are lower and life is more expensive off the farm. It was also more difficult to be assured of finding work. Walter and I visited informal settlements in Grabouw where many contract workers lived. 'The lorry will come from the farm and everyone will run and then it is gone', one informant told us. She also complained bitterly that when she was working for one farm, the farmer stopped sending a lorry or bakkie to pick up seasonal workers but organized a taxi minibus for which they would have pay. Others complain of gangs, guns and noisy shebeens in informal settlements, as well as the state of the shacks in which they lived.

Kritzinger et al. also report that contract workers living off farms often reside on the farm where they are working during the week if it is far from home, and that this causes problems for couples, particularly when one partner remains at home:

In many cases contract work appears to put substantial pressure on couples and families to maintain sound relationships – especially where the husband/ male partner is a contract worker. Husbands/ partners leave their households to work on farms away from home and our research suggests that wives/ partners especially fear extra marital affairs developing between their partners and women who are employed as on farm labour (2004: 35).

One woman who lived in an RDP settlement in Grabouw told us how worried she was about her husband who had been doing contract work on a farm in Theeswaterskloof and had not been home at the weekend for some weeks. She asked us to drive her to the farm, and we dropped her off at the farm where her husband had been staying. When we saw her again the following week she told us that her husband was now living on the farm and she was worried about how she and her grandchildren who she cared for would manage without him returning home with

income from contract work. This seems like an extreme case, but on other farms that we visited such male infidelities had driven people to desperate measures; for example, a man had murdered a contract worker he suspected of sleeping with his wife. As Kritzinger et al. also report, some who have moved off farms often move back in with parents when partners were away (ibid.).

Although Orton et al. argue that ‘the growth in the use of off farm labour appears to offer potential to significantly undermine traditional patterns of dependency and control’ (2001: 474), it seems that continued use of on farm labour has the effect of entrenching more deeply such dependency as it becomes increasingly threatened and insecure. Further, Kritzinger et al (2004) cite informants now living off farms as missing the ‘sense of community’ that living on farms provided (34). The work of NGOs and paralegals serve to challenge to paternalism in some measure, but at the moment it is unlikely that the deeply entrenched dependency and antagonism will simply go away. Although paternalism is being reconfigured by global restructuring of agriculture, it is not being eliminated. Indeed, as I show in later chapters, the effect of ESTA is to maintain paternalism where ties are being severed.

### ***Security of tenure and poverty: Mooi Plaas***

Mooi is Afrikaans and means Beautiful or lovely. Mooi Plaas was formerly a wheat-growing farm on the outskirts of Piketberg in the West Coast of the Western Cape. I visited Mooi Plaas with a paralegal who had been working with the people who lived there for a few years. She had taken the case to LHR’s Security Farm Workers Project some years before. We arrived at the residential area of the farm and waited on the stoop of one woman’s house while she went to get other farm dwellers. The houses were set on a gradient in and amongst long grasses, and some were tin roofed structures little sturdier than the houses in informal settlements. This part of the farm was anything but lovely. A group of about ten joined us on the stoop. There were a few small children, and most of the adults were of retirement age. Apart from one old man, most of the younger men were out at work, but many of the younger people had left the farm at the time when the farm had been sold, the water and electricity had been cut off, and all opportunities of farm work discontinued. Some of the people had gone away to stay with families and the farm itself went into liquidation. The

paralegal said, 'it was operational requirements. If the farmer cannot afford to employ the workers he can lay them off'. The farmer had left. The paralegal took the case of effective eviction to the SFP where it had been dealt with as an ESTA case. It had gone to court over the course of two years. In the first place, because of the farmers' bankruptcy, the magistrate's court had not declared the eviction as unlawful. The case went for automatic review with the Land Claims Court where the evictions were then declared unlawful. The evictees had won the right of protection of their tenancy rights but without basic services. Since the farm land was being sold, the judge had ordered that the state must house the tenants. Two years later, the farm dwellers were still living in deplorable conditions:

Every day for the last two and a half years, it seems like longer, we have had to walk 6 kilometers to fetch water. At first we were allowed to bathe there, but then we were only allowed to take the water back. There are no facilities here, no toilet, and nothing to burn for warmth. We have had to walk miles just to get fire wood too.

I asked how they get by and one woman said,

The children had to stop going to school because we could not afford shoes for them. They haven't had any education for three years, and this is the new South Africa! I make clothes out of old clothes. We do whatever we can.

I asked a younger woman with children if she worked.

No. When the children are older. My husband left and now I have to look after them on my own. I make their clothes as well. If I can get training when we move I will learn properly to make clothes and maybe get a business. But at the moment there is very little that I can do – it's a struggle, but we are used to hard times here.

Next the older woman who had spoken previously on whose stoop we now sat, got angry with me and the paralegal:

You bring all these people here and here they come asking all their questions, and what do we get? We have had no news about where we are going to live and when we can go there. They come here asking how we manage to survive. Look around, we are barely surviving. We thought that by now we would not be still walking for miles everyday just for a bucket of water. In winter, it is freezing and in summer it is too hot. What can we do? We can't afford to eat properly and there is hardly any work on the farms around here. When are we going to get our houses?

Another older woman told her to be quiet and began to tell us about the dangers on the farm. She was in her 60s but looked older, small and frail. She said:

I am an old woman and I live in a house up there on the hill. It's not really much more than a shack. It is dangerous here and I want to tell you about that. At night it is dark and there are bushes and long grass around my house. I will show you. I have seen rats and snakes up there. You can understand why we are all so frustrated and upset. We have been waiting for a long time for our new houses and nobody ever tells us anything but we don't blame you.

The woman who had got angry had gone inside and the others said they would take us to see their houses. Though the hill was not steep the walk up to it was stony and overgrown. As we walked up the woman who had spoken last warned us of snakes in the tall grasses. She lived alone in a single room with a tin roof. Inside the walls were scratched all over and there was a cupboard, a sink and a bed. Because of the tin roof it was roasting hot inside. She said, 'please, take a photo' and she stood in the frame. 'I think I might be better in a squatter camp, I don't know, but there is nothing here, only the other people. They look after me, or I might be dead - we all have to look after each other'. She was conscious of the state of her house. It was not really habitable. She had asked us to imagine having to go outside in these bushes at night just to go to the toilet. 'It's so dark, you can't see anything, and what if a snake came?'



*Figure 2 Elderly woman outside her tin house, Mooi Plaas*

When I next visited the LHR office in Stellenbosch I told the secretary about my experience. She said, ‘oh yes those poor people, I remember when Judith and Ricardo were dealing with the case. I was shown some press cuttings about the trial and I soon understood why they were so frustrated at telling other people their story whilst still nothing about their situation was improved. The paralegal had also taken another researcher to this farm to interview them about their experiences of ESTA over a year before. One sentence stood out:

[T]he wheels of government turn slowly, perhaps too slowly to save the old and the young of Mooi Plaas, who are driven to desperation as their situation becomes increasingly bleak (October 30, 2000: Cape Argus).



Why was their case taking so long? As noted in Chapter one, along with protection of tenure, ESTA also provides for development by demanding that where there is no alternative than to evict farm workers from the farm, the Department of Land Affairs must investigate where there is other available land for housing for occupiers. As I was often told, the Departments of Land Affairs and of Housing were not communicating, and the DLA was small and inefficient. In addition, the RDP housing had been experiencing problems for a long time, and people put on RDP lists six years previously had still not been moved to their new housing.

The poverty in which these farm workers were living is evident in their statements and in what I described. We get a further picture of how relations of dependence, described in Chapter two, have been severed because those who were able to earn have left the farm following its closure. Single mothers whose children are too young for them to work are struggling alongside those who are now too old to seek employment. There is no water or electricity, so it seemed that education was put on hold for the children on the farm as their mothers struggled to clothe and wash them. The forms of dependency remaining are for the most part familial, as we have thus far seen they are on many farms. Here though, farm dwellers rely on one another for the most basic of needs. The acquisition of water is made more difficult because of the remoteness of the farm.

What is striking about the situation is that it was one of the first ESTA cases, and it was won on behalf of the farm workers. The state is now required to provide housing for them. But it is a simple matter of lack of land, and likely the lack of capacity between the two government Departments, of Housing and of Land Affairs, that have conspired against these families being re-housed when their case was won. The national RDP waiting list means that these families, and those of the farm I described in the Introduction, are on that waiting list. However, the difference is that the help received by the families on Vlugte Plaas has not been offered to the people of Mooi Plaas, as much of this help was voluntary and unofficial. The inequality of access to resources, then, not only concerns access to legal resources, but to those which maintain families' livelihoods whilst they await the outcomes of their cases.

## **Access to resources**

Thus far in this chapter material poverty, socio-economic inequality and gendered poverty have all been raised as products of paternalism. Unequal distribution, and therefore access, to resources are part of the poverty experienced by farm workers. According to paralegals and NGOs, the uneven access to political and legal resources was also undermining claims for tenure rights, for example, which consequently affected livelihoods and relations of dependence within families, increasingly placing the burden of housing on relatives living away from farms. This section therefore focuses on uneven access to legal resources. This depended on the region in which farm workers lived, and the remoteness of farms to towns where legal resources and development provision were centred.

The effectiveness of chains of word-of-mouth depended in part on whether people lived on farms or in towns. For example, George recounted how he gained access to assistance in his endeavor to get UIF payment from his previous job on the farm where he used to live. He went to the Gerald Wright Hall in Grabouw, close to his home, when Department of Labour was holding a 'surgery'. After being refused UIF three times he was told by a friend that he met there that he could take the new form to the advice office where he would receive help filling it in. George now had easy access to the hall whenever the Department of Labour came to visit because his recently acquired Reconstruction and Development Plan (RDP) house in Beverly Hills settlement was close to the Gerald Wright Hall. He was more likely to hear about the visit from neighbours or friends, or from the local advice office which was also close by, than farm workers living on remote farms were. By contrast, most farm workers, ignorant of agents and agencies, are 'marginalised' politically, legally, and in socio-economic terms.

Another informant who lived on a farm with her family only came to know of the advice office after she and her fellow workers had been retrenched and when they were all being threatened with eviction, too late to take a case to the CCMA (see Chapter two). In Grabouw, the legal advice office was the primary source of free legal advice, whereas Stellenbosch was a hub of legal NGOs. The advice office was not the only recourse to legal advice in the town, but as Hall et al. (2001: 7) have

noted, most private attorneys do not take on eviction cases because farm dwellers cannot usually afford to pay them. Many farm workers are distrustful of unions, as in the above case where the people retrenched had been because they had gone on strike with advice from the union that they had joined. Raymond, the local paralegal, told us that he purposefully played down his role of union representative to farm workers distrustful of unions, but maintained that as well as the funding this union provided for the maintenance of the office, this role was valuable for him to be able to represent clients in CCMA cases. When they had lost their jobs 'the union representatives, Michael and Abraham, were nowhere to be seen. We just couldn't find them' (interview, Sarah du Vries: Primrose farm). As has been noted in the introduction, many farm dwellers are not aware of the provisions of ESTA nor of the availability of legal advice, which, in any case, as shall be seen in the next chapter, is contingent on an advice office being open and a paralegal being available.

Lack of access to NGOs or state welfare and advice services, through lack of awareness, prevents farm workers from knowing, for instance, whether they are being paid enough, or whether their UIF was being paid. The Department of Labour, notoriously understaffed at the time, also struggled with checking conditions on farms. So the chances were high that unfair practices were occurring on farms. Indeed, almost all of the farm worker dwellers we got to know had had some recent quarrel, at the very least, with the farm owner, and considered themselves to have been intimidated or unfairly treated.

The more remotely farm workers lived, the less access they had to these essential legal resources. This had been recognized; in response, the paralegal movement (along with LHR) developed the idea of clusters. A legal advice office with at least one attorney would operate in commercial centres, and surrounding satellite village advice offices (paralegals) would have single referral or reference contacts. Paralegals did their best to educate farmworkers on farms in their labour and tenure rights. Oom Sakkie, paralegal in Riviersonderend, told me how a farmer had approached his office asking for training. But such cases are rare, and most farm dwellers, unless they hear through contacts on other farms about the existence of the paralegal, usually are not aware of their rights until it is too late.

## **Poverty and marginality in academic and activist literature**

Central to academic and rights based analyses of farm workers is the concept of ‘marginality’. In order to unpack this concept and to further understand how farm workers’ lives are brought into view, I use this section to review sociological, anthropological and legal literature that uses a Marxist framework within which to situate the economic, political and legal position of farm dwellers. The history of the emergence of coloured farm workers as a group worthy of ethnographic enquiry, defined by a discourse of historical and gendered paternalism, has been discussed in Chapter one. The experience of eviction and a redrawing of the lines and boundaries of paternalism through experiences of law further articulates the identity of coloured farm workers. This has also been described in Chapter one. New forms of employment practice such as contracting has had an impact on family and marital relations among farm workers (Kritzinger et al. 2004: 32-34) and this is illustrated through my own ethnography. Life histories and current strategies for survival in new contexts of increased insecurity uncover the reasons why this group are described as marginalised, but they have also been marginalised in the past, being liminal in terms of race, in terms of labour organisation and regulation and in terms of access to social services (see also Rutherford 2001: 5).

The rhetoric of marginality must be seen in the context of its production by NGOs, academics and the politics of activism as much as it can be seen to be produced by ‘reality’, for reality in terms of such writings comes of a retelling of social experience, or, in terms of politico-legal experience, what Susan Coutin describes as ‘testimony’ in its religious and legal connotations (Coutin, 1993). Such testimony comes in many different guises. In the activist context it comes through legal interviews and development theatre, in meetings organized on farms; through academic research and writing and through lobbying activities; through celebrations of national holidays such as Human Rights Day or Women’s Day. It also comes from the local activities organized to accompany these days – including attracting increased inclusion of farm workers; the production of NGO newsletters; testimonial legal documents and ethnographic interviews. NGOs conduct ‘case studies’ on the circumstances of farm dwellers and their testimonies, might be little different to anthropological devices, for example, those found within these pages. Indeed, in the

Chapter one of *Working on the Margins*, Blair Rutherford provides a narrative description of Zimbabwean farm workers that includes a rural contextual picture, their appearance and the appearance of their housing, and statistical information on for example, what proportion farm workers make up in the national population, and how much they contribute to the national economy (2001: 1). Rutherford goes on to explain that this 'is typical of a common genre for discussing farm workers in Zimbabwe in the 1990s' (2001: 1) and that these are mainly written for NGO's attempting to draw 'attention to farm workers' general 'lack' of development. The testimonies I speak of, though, comprise of narratives such as these, but also personal narratives, and legal findings – some NGO's in recent years attempting to address marginality by putting farm workers' experiences at the centre of the testimony.

The National Community Based Paralegal Association (NCBPA) provides its policy on its website.

[The NCBPA's] policy is guided by a framework that seeks to address human rights problems that are caused by communities' status of *poverty, marginalization, disempowerment* partly attributed to past discriminatory policies which contribute to their current status of exclusion from decision making processes that affect their daily lives as well as benefiting from their legal, social, economic and financial entitlement (Taking the Law to the People', NCBPA website, emphasis added).

In my a letter sent to me by LHR confirming my work placement there, farm workers were described as marginalized, and in my first encounter with the organization, when I went to meet the new Security of Farmworkers Project co-ordinator, Kamal, he also told me that farmworkers were marginalized. The word was used more often outside of academic literature than paternalism. The efficacy of the word is the implication that farm workers have been placed outside or at the margins of these areas not only by farm owners, or by relations forming part of paternalism, but also by the state. This therefore suggests that the state itself holds some of the responsibility for farmworkers' position in society. The history of the classification of coloured farmworkers in apartheid and the deeper history of slavery provides all the evidence one needs for arguing that the state and wider society have certainly in the past played a part in forging farm workers' position in society. And the history of apartheid law, protecting coloured farm workers' jobs and housing, and farmers,

certainly provides us with a clear example of Blair Rutherford's 'domestic governance' (Rutherford 2001: 103).

Marginality has a certain efficacy in raising awareness of the poverty of rural communities, and it directs (perhaps limited) attention to forms of political awareness and behaviour that are slowly introducing themselves to farm workers. Examples of how farm workers continue to be 'liminal' to, and on the margins of, those realms of state and society that I have outlined above, are clear not only in ethnography, but also in the accounts given by NGOs and media. The concept ignores the sense in which farm workers have always negotiated their own resisting strategies from within the confines of paternalistic and neo-paternalistic discourses, however, which the arguments that Du Toit makes in his description of paternalism also account for. There is a sense that in being marginalized, farm workers are not involved in the shaping of their situation, but have been pushed to the margins by external forces. However, they do operate a certain amount of resistance from within the confines of the margins.

Du Toit's more recent writing and research concerns poverty levels in the fruit and wine farming areas of the Western Cape and wider global agri-business. He sees farm workers as 'marginal', in part due to South African agriculture joining the global neo-liberal free market, and in part due to new forms of social relationships brokered within the realm of such neo-liberal economic change.

Marginality is caused by past inequalities, paternalism, and also unequal access to socio-economic, political, legal and developmental resources. Farm workers continue to be marginalized by laws that seem to be pitted against them, and by the global supply system. Testifying to marginalization, as shall be shown in the next chapter, places the onus not only on the farmer, but also on the state, to address relations of dependence and unequal access to resources.

## **Poverty and Insecurity**

In this chapter I looked at what security means for farm workers in terms of economic, social, political and legal security. I framed this in terms of the extent of poverty in real terms, and explained this through the discourse of paternalism, in which relations of dependence keep farm workers politically and economically subjugated. In as much as these relations of dependency are. How this is translated at political and activist levels are also discussed. Drawing on studies of poverty that highlight historical paternalistic relations, a discourse of marginality is translated from academic to grass roots activism. The following chapter looks more closely at the discourse of marginality as it is being used as a platform for social action among farm workers, showing how it at once cuts out the necessity for outside forces (aside from legal knowledge), for example, the farmer or unions, yet creates a new form of political organisation based on the existing quasi kin structures between farm workers.

In this part of the thesis I have set out what paternalism means to people living on farms, and to some extent I have looked at the position of ESTA, and particularly how farm workers have used law either once the paternalistic contract has been cut, or in addition to these relations. But operating within its confines means operating through quasi kin relations of dependency, violence and financial insecurity, and the overarching authority of farmers. In the next part of the thesis, I examine how farm workers have been considered and represented by the movement that I have briefly examined above. The second part adds to the sense that rural South Africa is a liminal space where old and new forms of activism operate in opposition to old forms of authority and quasi-legal authority that is the legacy of farm paternalism. The transforming of farm workers into legal citizens, is described in the next chapter, which develops the ideas of marginality as a liminal state, and looks at its potential in aggregation. This chapter also provides a bridge between the first and second parts of the thesis.

## Chapter Five - From the Margins to Activism on Farms

In this chapter, I look closely at the idea of testimony as a vehicle for testifying to this position of marginality, and ultimately as a vehicle to overcome marginality. Personal and particular experience, through testimony, reflects and reconfigures the mores of the farm. I draw particularly on two ethnographic examples, of the life history of an activist, Eveline Jonkers, itself a form of testimony; of the testimony of a drama for Women's Day, depicting domestic violence, and of a meeting on a farm organised by the Women on Farms Project, in which farm workers were encouraged to share their testimonies, and to act as a family in pursuing rights.

Testimony was used to effect farm workers' knowledge of each others' experiences in order to motivate them to act cohesively rather than individually, against the disparities of the farm. Showing how farm workers' experiences were common and could be addressed by the same actions was also supposed to motivate farm workers to 'claim' rights for themselves. Through collective recognition of this state of being, farm workers might become empowered by overcoming marginality, according to one NGO working directly with farm workers in the Western Cape. By testifying not only to others but also to *each other*, testimonies that are familiar become shared and at this point they can be mobilised as platforms for collective action. This resonates with an argument made in another legal activist realm in South Africa (the Treatment Action Campaign): that mobilising rights and going to court is not enough, but should be the final stage in a process of wider activism that involves people themselves galvanising and relating their own stories to one another. For some NGOs I encountered, it was key that farm workers themselves took control and represented themselves, together, to become activists. It promoted a form of activism that seemed familiar, that of union organisation, and yet it attempted to promote a style of organisation rather than direct involvement of unions, since unions were renowned for failing in attempts to organise (Murphy 1995: 21). This form of activism, that of self-representation, was the only notion that had in reality been always drawn on by farm workers as they acted individually in dealing with work or housing issues with farmers. The difference now would be that farm workers would act together in recognising their individual human rights.



In previous chapters I have described life histories of farm dwellers and workers, showing the similarities between their experiences. I recognised the main dynamics of power inherent in paternalism, and the effects thereof. In each chapter, life histories of farm workers provide examples of these dynamics. These life histories, converging to produce a broader picture of life on farms, are therefore one kind of testimony to the experiences such a life on farms and of the paternalism it entails. In interviews with evicted farm workers (for example, with Beauty, introduction), a similar kind of testimony is offered that is situated in the more immediate past. These also lay bare unequal power dynamics inherent in paternalism showing how these dynamics continue whilst relations between farm dwellers and farmers are being severed – indeed they are key to the disintegration of such relations. A lack of legal awareness is also attested to, given the success the farmer had in evicting a family who might otherwise have remained in their house. The similarity of testimonies relating to past experiences with those attesting to current ones is striking, in spite of new laws such as ESTA and the LRA now in place.

In Chapter four, I showed how poverty and inequality of access to resources form a part of paternalism. Then I turned to literature which suggested that paternalism is part of an overall marginalisation of workers. It seemed to me that NGOs had taken this word as a more useful picture of reality on farms than paternalism, and had used it as a platform for lobbying. But to lobby effectively, the idea of testimony, already clearly being used in law, needs to be drawn upon. I argue in this chapter that testimony is about re-educating farm workers about their relations with each other. They are shown that they can be more effective than others in challenging their marginality. I consider, then, how marginality is used as a platform to challenge conditions and relations on farms.

The word marginality has been drawn from anthropological accounts, particularly that of Blair Rutherford (2001), and has become currency in development language. As an analytical category, it includes the relations of paternalism within a wider field of activity – it situates these relations within a realm of state power, laws, and local and global economic practices. Whilst paternalism, then, is an analytical category that situates current power relations in history, it is purposeful only as an observational category; it is not drawn on directly in a meaningful way as a challenge

since the hegemony inherent assumes that the farmer will always come out on top in this relationship. I aim to show in the second half of this thesis however, following this chapter, that its reality is reproduced by the law in its attempts to protect farm workers. For some activists, law is only part of a strategy to shift historical power imbalances. Because paternalist practices are so engrained in farm life, they come to define how law is understood, processed and practiced. As Coutin argues, ‘as law creates social reality, social reality reproduces law’ (1994: 284). These activists, along with paralegals, localise new strategies that seek to mobilise law as legal consciousness (‘taking the law to the people’ is the LHR motto, for example): to shift power into a new type of collective legal consciousness, by promoting a testimonial style of sharing, drawn from law as well as from other moral codes inherent in farm workers’ modes of practice.

This chapter aims to provide a bridge between the first part of the thesis, which sees paternalism on farms from the perspective of farm workers; and part two, which examines the activities of their representatives, and could be said to see paternalism from activists’ perspectives. In this bridge chapter, I look at how activists are incorporating farm workers, in order to address the failures of previous representational practices (unions). They are motivated to act on their own behalf and to represent themselves through solidarity and knowledge of laws. This addresses further marginalisation from political process, but also obscures politics in order to attract farm workers to do this, since they have little trust for the unions that have tried to organise on farms in the past. The chapter examines how the concept of marginality has been manoeuvred by activists, moving it out of the realm of observational category, in order to include rather than marginalise them from their own representation. Addressing particular problems on farms by getting farm workers to talk to each other about them and collectively to learn how to negotiate removes the need for the union. So instead of speaking of political action, problems are addressed through the idiom of the family.

This new method was a way of organising from within is evident in a description of a meeting organised on a farm by the Women on Farms Project (WFP) a local NGO based in Stellenbosch and from the case of a female farm worker who now works for the Women on Farms Project as a ‘field worker’. Her narrative is familiar, and

resonates with those of all the other women in this thesis whose interviews I have thus far analysed in relation to eviction, movement and more widely to paternalism. This story, however, offers insight into a sort of personal transformation that has wider consequences for all living on the farm. If the other narratives are indicative of the past on farms, this one is indicative of change. As Eveline says herself, ‘before we did not help each other, but now we do’. As she testifies to her personal transformation, with the WFP she attempts to help other farm workers to transform their lives. It is key for the organisation that farm workers themselves are doing this: – testament to the power of this style of organisation to change relations on farms.

Testimony of experience, as a legal-Christian form of public narrative telling, has been discussed by Susan Bibler Coutin (1994). For Coutin, testimonies are used as proof of refugee status, becoming almost a requirement for the community assisting migrants to become legal citizens. The moral code in these testimonies is imbued with Christian notions of testimony, as well as being a sort of legal testimony that can be used should their actions be challenged as being illegal. They produce refugees, or asylum seekers, rather than economic migrants. Without making overt comparison between Coutin’s Sanctuary movement and the movement described within these pages, I extract the notion of testimony as a form of legal-political action that encourages people to relate more with their neighbours than to struggle alone as individuals. For Coutin’s Sanctuary workers, power imbalances are evident in ‘othering’ of migrants in the act of requiring testimonies:

By assuming the authority to interpret law, Sanctuary workers created hierarchies between themselves and Central Americans’ (Coutin, 1994: 283).

I make a theoretical comparison of the way in which testimony is used as an act of reforming farm workers from marginal to empowered.

These testimonies, I argue, are public narratives that have purposive impact on the transformation of farm dwellers from positions of marginality; they are platforms for empowerment and they work as such because of their public nature. Marginality (and/ or challenges to marginality), therefore, become key in addressing not only paternalism on farms, but overt rights violations (one example is the lack of development described in Chapter four).

For this concept to be pursued, it is also necessary to revise the notions of marginality and marginalization, and to question in particular the assumption that they entail passivity. As should now be clear, farm workers are not themselves passive in creating the conditions of paternalism of farms. They negotiate their positions within a set of pervading power dynamics, rely on protection that it affords them, and so on. However, the word marginalization implies a certain amount of powerlessness in the face of the impact of state practices. Because the concept includes the impact of state agencies and law on the lives of farm workers, activists have drawn usefully on it, and have continued to attempt to publicise the ways that farm workers have been marginalised by history, and by current practices. It is a tool for lobbying the government, showing its culpability, showing how conditions for farm workers ought to be changed and monitored by the external state, rather than being left in the domestic farm domain and sharing its responsibility for alleviation. Paternalism, as an observed set of rules, is useful for academic analysis, but though its history was enabled by the state's actions and/or lack thereof, the concept of marginality has the potential to include more actively a role for the current state and new laws.

Farms are not total institutions<sup>40</sup> in a strict sense, even though at times they may have appeared this way. The apparent microcosm of the farm exists within the state, even when farmers have enacted farm law. This power was previously granted to farmers by the apartheid state which allowed farms to act autonomously with little interference. Having read of paternalism before I went to South Africa, I was not surprised to behold its effects. But in the lexicon of NGOs and activism, the word marginality seemed to be more key to understanding how farm workers have been ignored by wider society, and it further implies a social responsibility for others to act on their behalf and to lobby the state to take responsibility for farm workers as rights bearing citizens – to transform their position so that they are recognised as the essential part of the economy that they are. In the second half of this thesis I show how such representation of farm workers is made through legal and quasi legal testimony. Here, then, I look at how testimony is being used for farm workers to recognise themselves as rights bearing citizens.

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<sup>40</sup> To borrow Goffman's descriptive terminology, c.f. du Toit 1998.

Two ethnographic examples are used to show how marginality is represented in testimonial narratives. Following this, I discuss the concept and how its testimony might transform farm workers into activists themselves, rather than constantly being represented by others. The two ethnographic examples show how categories familiar with farm workers (of family) can be used to motivate them.

### ***Eveline Jonkers***

For Eveline Jonkers, this was a case of a woman whose family motivated her to do work that helped others. When organising a union style organisation, the Women on Farms Project compared it to a family. The experiences of this same woman, drew attention to the familiar concept of family, one that is key to the maintenance paternalism. Eveline, from within this organisation, was now removing the farmer as farmer from these relations.

Whilst I was staying in Grabouw I got to know and interviewed Eveline Jonkers who works with the WFP and has also been a farm worker in the area, now staying on De Rus farm with her children. We interviewed her in her home, where she had been for five years and where her youngest child (she has three children) was born. I include this interview in order to describe the life history of one of the women at the forefront of a new initiative in Grabouw that had been put into place by the WFP<sup>41</sup>. The life history of Eveline draws on the familiar experiences of many who live in the area. She talks of her own family and the effects that ‘caring for others’ has had on her life and those of other farm workers on the farm.

I was born in Grabouw in 1970. I did my first school years until standard 6 at De Rus farm primary school [where she now works]. My parents moved to Kromvlei and then I got involved with the youth group there. My parents were drinking at the time and most of the little money they had went on wine. I was at school until standard 6 and then I went to work in the orchards. Then my parents moved here when I was 15. Whilst we were here my mother’s sister died in Hermanus so they asked me to go and work in her place. I was sixteen.

Eveline’s great grand mother had first worked in the house of the farm in Hermanus, following the time-honoured practice of drawing domestic workers from a trusted farm dwelling family. Following the same practice, Eveline was required when her aunt died to replace her, despite not having previously lived or worked on that farm or in that town.<sup>42</sup>

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<sup>41</sup> In the next section I describe this initiative through a meeting on a farm.

<sup>42</sup> Employing women from one family in the trust position of working in the farm house was a widespread practice that had continued since slavery. An elderly woman on another farm told us at great length about working as a child in the house of the old farmer, and her relation with his daughter.

While living in Hermanus, Eveline got pregnant and came back to live with her parents on another farm in Grabouw to which they had moved. Whilst there, and during the nine years she worked on the farm, Eveline got involved with workers' unions. She was particularly involved with one, the South African Plantation and Allied Workers Union (SAPAWU) and through this work she became familiar with laws that might protect the rights of farm workers; the similarity to rural paralegals' initial dealings with law is significant. She then became chair of a workers' committee on the farm set up by the union. She told us, 'I felt that field was for me because I really wanted to help other people'. When asked why she had got involved in union work in the first place she told us that it was because of her earlier involvement in youth groups:

While I was involved in the youth group it made me look differently at the world and it made me get a different perspective. There was a teacher there that was chair of the youth league. She was always encouraging me and guiding me at that stage and taught me to care for others. I learnt a lot and found it was worth while to care for others. I made a promise never to abuse alcohol because of my parents. The youth tend to turn to alcohol and with drinking comes irresponsibility. So I had to find another direction. So learning about the law and looking after other people's well being became that responsibility.

Interspersed in the narrative of her life, the personal influences on her desire to learn more about law and to help other farm workers with their problems are numerous and she continuously refers to this connection.

We moved around quite a lot when I was a child because my parents drank. While I was with the union I did different courses and acquired knowledge of the laws, especially labour laws, and I was elected into the National Executive committee. This was in the 1980s when I was still at Fyn Farms. Then my brother was involved in an accident and according to him they did not handle the case well. He resigned and was at home and so he did not get any money. His whole body was fractured and he got permanent brain damage from a blood clot and all the farm did was to give him R75. We went to the advice office and nothing happened.

Here it was explained to me that at that time the town was politically extremely divided and because of this there were two advice offices. One was unofficially ANC and the other was run by a man who was seen to be acting for the coloured people. She continued:

He did not get the money from the Workers' Compensation [fund]. He moved from Fyn farms to here for that reason. I came here too and the same union was here so I was still working for the union.

Immediately she told us how she came to be involved in the Women on Farms Project and went on to discuss their involvement on the farm she lives on now. The Women on Farms Project was another NGO that worked closely with LHR, and in fact had formerly been an LHR project. Their lobbying work alongside the Centre for Rural Legal Studies and other NGOs working in the area varies from lobbying for the provision of toilets in vineyards and orchards; to pressure to end the informal 'dop' system of payment that is still a practice on some farms in varying forms. They approach farm workers primarily through women rather than men, and offer education on domestic violence. Women are not however the prime focus of the work of the organization, as I was told by those women who worked for WFP. Rather, they are the means through which to involve the family as a whole. Through their initiatives, for instance, working with women in focus and theatre groups, they promote their right to security of the body; non-violent communication, as well as other rights. These initiatives have broader implications for farm committees.

Two years ago I got involved in the Women on Farms Project. I was chair person of the union for five years here. But we had problems with the union rep. The workers got sick of him and so they left the union and established a workers' committee on the farm that would deal with the management themselves. [The] Women on Farms [Project] got in contact with us and we invited them to come and sit in on a committee meeting one evening. They came to the meeting here and they introduced themselves. They were Deena and Cheryl, and we had a few women from the farm. We listened and we all shared our experiences. After this meeting we were very interested in the WFP and so we called a general meeting and explained the activities of the project, but everyone was very reluctant to be involved with them because of the experiences we had had with the union. Deena suggested that we stay with the union as the union has powers that the WFP does not have. So we called a meeting with the WFP, COSATU and SAPAAWU and explained the problems with the union. COSATU undertook to be the watchdog of this union's activities and so we all signed up again.

There was an eviction scare, a lot of families were threatened with eviction, but the union did not handle that well. The farm gave the option of down grading pay or of leaving the farm. Two permanent workers were retrenched and had to leave the farm. We decided to leave the union. One of the permanent workers was married and his wife was sick in hospital at the time. I approached management to talk about his case.



Some people had left their jobs of their own free will so I asked if there was a job for him while he had these problems and they took him back. Last year our committee renegotiated the wages and we learnt that it is better to negotiate rather than to fight. We learnt about negotiating from Women on Farms.

Since then we have had training with WFP on domestic violence. There were a few people living on the farm who were hitting women. Whenever there was a case the WFP went to the couple and discussed with them whether it is good or bad to hit. This has caused a 90% drop in domestic violence here.

There was then a case where there was a love triangle – one woman had an affair with this man that nobody knew. Her husband was known here and he was not a trouble maker but this man came and killed him. After his sentence we had a petition and took it to the farm management. We got an interdict that he wouldn't be allowed in the area.

What we have learnt from Women on Farms is a lot. In other times people did not worry about each other and didn't want to get involved. People would say 'this isn't my business'. Another example is, a 13 year old girl was raped by a young married guy. They called me and with some of this knowledge I talked to the girl and persuaded her to go to the police. I went with her and to the hospital and that man was arrested. I felt it was good work.

Now my mother has been a born again Christian for 17 or 18 years. My Dad died two years ago in an accident. It's good that people can see how we have come up. Last year I got a Community Worker of the Year award from the farm management. I am proud of what all this means for this family. Now people call me asking for my advice.

*Will you continue to be involved with Women on Farms?*

Oh yes. They want to open an office here in Grabouw and there is me and another woman who are up for running the office. There are many strong people in Grabouw.

Her insistence of the importance of the family is here underlined by her mentioning how they had 'come up', in her words.

Eveline's position in relation to the rest of her family has characterized her work, from the domestic job she did in Hermanus to her social work. Her references to her parents when talking about social or caring work is clear in the transcript I provided. For Eveline, her moving from one town to another to work in the somewhat privileged position of farm domestic servant in Hermanus was contingent on her being a family member. It was as though to employ anybody outside of this family would have been an outrage. Of course, we were not witness to the negotiations involved, nor did we know how Eveline herself really felt about it at the time, but her

indication in the interview was that the decision was really out of her hands, and that she had done what she had been told to do by her family, who had also done the bidding of a farmer in Hermanus in providing a worker that could be relied on and trusted.

The account conveys the impression that there were several watershed moments. The first is the influence of the youth group with which she was involved in choosing not to follow the path of her parents and other young people. This led to her being involved in union activities and work on committees. Second, her experience of attempting to help her brother brought about a realisation of the powerlessness of workers disabled in accidents that familiarised her even more with laws and available resources, or their respective failures and lack. Third, her acquaintance with the WFP was a particular turning point, because it occurred as relations between the union and farm workers on the farm she had moved to were floundering during a crisis. At this point in her narrative, she described the introduction of the principle of testimony and sharing, saying 'we listened and we all shared our experiences'. From then on, she recounts the advantages of being involved with this organisation, drawing on particular cases where either lessons were learnt (for instance, the training on domestic violence), or key negotiations took place. Interestingly she refers to this watershed herself, saying 'before people did not worry about each other'. It seems that her experiences are not unique to her, but that everyone on the farm has profited from this transformation.

The way in which Eveline tells her own story, with few prompts, is itself a sort of testimony that describes first, how things were, second, the moments of transformation and third how things have been since the shift. What is particularly interesting is that in spite of many years of union involvement, it was an NGO that inspired and taught her and her colleagues how to negotiate with farm management, and indeed with the union. The personal satisfaction comes both from the fact that her mother has given up drinking (as a result of the positive changes around her) and from her winning an award from the farm's management - a major recognition.

In the next section I describe a WFP meeting for farm workers and dwellers in Grabouw. This had been organised by Eveline and another local farm dweller who

was one of Eveline's co-workers at the WFP. Key to the success of this meeting is the kind of sharing of common experience, public testimony, familiar to the reader from the first three chapters. It is this testimony that is key not particularly for knowledge gathering for the WFP, but to the concept of helping each other.

***'We listened and we all shared our experiences'*** (from Eveline's testimony, above)

We had found out about the meeting on a local farm in Grabouw from Eveline. Estelle, her colleague, who lived on another farm, had then told Walter that the meetings would be clustered by area, with the aim of creating contacts between people on neighbouring farms. Eveline and Estelle, both formerly farm workers themselves, were WFP co-ordinators for the Grabouw area. There was some anticipation of these events. A farm dweller we knew had heard about the meetings and got in touch with me one day asking me to take her and her friends to her local meeting that evening. It transpired that she had made a mistake and this meeting was not due to be held for another two weeks. When we passed this on to Eveline and Estelle, they seemed pleased at the enthusiasm expressed by our informant.

Each cluster was made up of four or five neighbouring farms, and there would be several such meetings over the next few weeks. We arrived on a large farm that I had never visited, and we were strangers to all the farm dwellers there. The meeting was to be held in someone's house. Chairs lined the outside walls of the living room and men and women of all ages crammed into the space and stood in the kitchen doorway. There were 23 people at the meeting, only eight of whom were men. Four farms were represented and seven people came from one of those farms. There were quite a few crèche workers and a womens' health worker included. The agenda for the meeting was set out by Estelle and was as follows: Welcome; problems; association; functions; report back (*terugvoering*); and close.

The meeting was opened with a prayer asking God to watch over all the people in this meeting, to aid them with their problems and to send His guidance in this meeting and in people's daily lives. Everyone in the room introduced themselves individually and each was asked to say something about their problems with the farm that they were from. A lot of people were generally worried about eviction and had

also noticed that a lot of permanent workers on farms were being retrenched because of ‘operational concerns’, the implication that the farm could no longer afford to pay permanent workers. This usually resulted in a farmer retrenching a permanent worker, legally evicting him/her, and hiring a seasonal worker via a contractor in her or his place. The practice of retrenchment in this way usually caused an ‘eviction scare’ amongst most people living on a farm where this happened, and most people at the meeting were worried about this trend. People were also concerned about discrimination and victimisation on their farms.

The first specific problem was to do with pension funds – at one farm R35 was being taken off their weekly wage. One woman said ‘we are having problems with this but the management is on holidays until 24<sup>th</sup> July. They take R35 each week for this pension but we are worried that we will not get our pension as we were not asked to sign anything.’ Someone from the same farm complained about a security company that had been hired by the owners. When children were running around some of the security guards were hitting them. Walter spoke up: ‘these cases should be taken to the police and a criminal case can be made’.

A second farm had its own problems, particularly with a *smokkelary* (illegal shebeen/distillery). ‘We have complained to management but we are getting no joy from them’. They also complained that the costs for the upkeep of the recently built club house were being charged to them when the management promised that they would pay for half of it. At this point Estelle interrupted by asking ‘What is the most pressing issue here? Then in a month we can work out a strategy to handle these other problems’. Someone said, ‘the pensions’, but someone else said ‘no, it is the UIF. We seasonal workers get no UIF [Unemployment Insurance Fund]’. Estelle responded ‘If you want to stand up for your rights you must do it for yourselves, because the farmer is not going to stand up for your rights’. She followed by telling them how to claim UIF via the Department of Labour. There was an implicit judgement, made by one who had experienced life on farms, of what was most urgent of these cases; and a call to ‘stand up for your [*own*] rights.’

The third farm’s problems: ‘My father went to hospital with his leg and when he came back he was told to work even though he could not’. This was followed by

confusion and vagueness about pension terms and monies, and another complaint about an illegal shebeen and its dangers. People from the fourth farm told of how some on their farm were being evicted the following day. There were also deductions to the wages generally. The people being asked to leave had been sick and had been living there for a long time. When they recovered they went back to work and were told to go. Children under 18 were being told to leave the farm when they finished their education. Again, confusion about pensions was also aired. The money for pensions was being taken from peoples' wages and they did not know what the amounts meant.

The problem with pensions was apparently universal, as, it seemed, was the problem of illegal shebeens. Something of the nature of racism between coloured farm dwellers and Africans is implicit in this complaint, reflecting again the racial lines on which paternalism has traditionally been drawn. It should also be noted here that there were no African farm dwellers at this meeting, which was in Afrikaans. Concerns over both pensions and evictions are universal, and have been seen in other accounts presented earlier in this thesis.

Next the association was explained by Estelle:

It is to be part of a cluster of associations in the area. Each section will have four or five farms that will meet regularly on different farms, instead of one big meeting for the town. That way each cluster can discuss and address their problems. A lot of these are to do with the law. Most people are aware when wrong is being done to them but when they know about their rights they can help themselves.

Different options were being considered for different towns by the Women on Farms Project but most of the people in Grabouw wanted *their* association to become a union, she added. Most in the room nodded agreement with this sentiment, though some had strong reservations about being in a union as they felt they had been let down by unions in the past. Promises had been made in the past that had not come good. In answer to some of the misgivings:

At the moment we are still an NGO. Even if we are a union here, everyone involved with the Women on Farms Project will be like a family; the WFP will incorporate this union. We will be a bit different but, well, because it will be like being a member of a big family.

The formalities were then explained. Grabouw would be one cluster and the head office of this union or association would be in Grabouw. Each farm would be involved with three or four other farms. It was then discussed what could be done to get funds for transport. Other similar meetings were announced for the next few days.

Driving back home, Walter expressed his astonishment as we talked about the meeting. 'An association... a union', he exclaimed, 'is what it will be! I think that is very clever, how they have done this – nothing like this has been here before. This is incredible'. He found it astonishing because farm workers were essentially being organised into a union for which they themselves would be responsible, with assistance from the WFP; all this, in spite of the continued animosity towards unions themselves.

### **(Re)Organising through the idiom of Family**

Elizabeth M. Schneider (1991:312) argues that as well as legal and political discourse there is a moral one that involves more tacit understanding of the generalised concerns entailed in womens' rights activism. This is the case with the WFP, where the moral discourse is a normative understanding of Christian ideals regarding family – their general philosophy being that if we address concerns of women then the family will eventually follow' (conversation with Deena Bosch from WFP, March 2003, fieldnotes). Family - a notion apparently missing from union discourse, but familiar within paternalism - becomes the discourse through which activism and sharing knowledge of human rights is expressed. It appears to set in motion a change that was described by Eveline – where instead of acting against one another and variously against or with the farmer, they acted together and helped one another. The moral understanding with farm workers of the importance of family, and the normative values of fairness, respect, and sharing inherent within the Christian discourse of family, was key to mobilising activism, and organising them as a group rather than as individual households.

It was precisely this shared communal aspect of farm life that farm workers said they missed when they move away from farms to RDP or informal settlements (see Chapter four). In this case, of course, the family refers not only to the family unit, but also to farm workers in general taking care of each other and standing together; it is the cluster, the association, and the NGO. But as well as the overt legal references, and the focus on particular problems (or cases) there is a more generalised movement-based approach that is focussed on familial ties which transcend blood ties. Conversely, some of the lobbying activities of the movement in general are focussed on more individualistic, and inherently legalist, concerns of individual rights to housing, in cases where the original agreement to occupy a house on farm is between the man and the farmer. The expression of these legal categories is made through the family, a concern more explicitly associated in Christian morality with women. Through women, and connecting dependence *between* families (not merely within), the family becomes a powerful category of belonging and solidarity. The

moral high ground is further gained through this idiom as it discounts the father figure of the farmer in paternalism; thus discounting paternalism altogether

But the paternalist construct informs these legal categories. The law is supposed to be addressing land reform, and as paternalism forms part of relationships made through and on the land, it should be addressing paternalism. Reforming relations to the land where relations have been shaped by paternalism since the outset of colonial and native interactions, involves addressing these relations, which the law, in fact, does not do. It was always integral that, as in Serafina's life story, there was a man with whom one could move – it was also, as in this case, often the fault of the man that one had to move in the first place, though in other interviews there were a variety of reasons for such a high level of movement on and off local farms (see Chapter three). The ambiguity of the definition of family, whether legally, in terms of farm life, or one pursued by a movement which envisages coherence and commitment within the grass roots of the activism, is interesting to note, and warrants much closer attention. The conclusion of this thesis returns to this issue with by analysing the positioning and rearticulation of family vis-à-vis ESTA. The family was also an issue for Eveline in her interview – it was the reason that she had moved to different farms, and her concern for her parents made her see that she had to get involved in activities that didn't involve drinking.

What seemed to be suggested by the testimonial style of the NGO meeting, was the potential to change the power dynamics of farm life through the intervention of a particular NGO by acting as a family, and by simultaneously tackling problems through rights. The latter is not unique to civil society land NGOs, as James has claimed (2002: 2, see also Rutherford and Nyameida 2000) The difference here between this apparent movement and usual ways in which civil society raise support, is the allusions to the quasi-family organisation, as a kind of organic and 'moral community' (Jensen 2004), with reference to the informal support networks of farm workers. 'Family' does not describe specific kin relations but is rather used a metaphor for the shared experiences of labour practices and farm life in general. This is a metaphor that also cuts across not only the household, but also the farm itself. 'Family' now transcends the paternalistic family-like community, formerly the only network through which farm dwellers and farmers had acted. Indeed, since this



apparently emergent ideology of family is one that already exists within the consciousness of farm workers – it is not so much imposed by an NGO or by a particular style of development – the strength of the metaphor reinforces qualities that might be associated with such a ‘moral community’ of farm workers (Jensen, *op cit*). For instance, the NGO is not trying to attempt to replace the father-figure of the farmer, as it actively promotes *its* role as a sort of union. Unions do not seem to have this style. Further, the NGO purposefully trained one or two local farm dwellers – rather than sending workers in from Stellenbosch activists to Grabouw. These women, who had worked and lived on farms their whole lives, could identify with farm workers and more easily influence people living on farms in the areas. This is a tactic that unions generally do not use, in part explaining their failure to organize labour on farms. By rearticulating union organisation through the idiom of family, where, even if there are problems and antagonisms, connections cannot as easily be broken, establishes a rise in trust for union style organisation; such trust would be based upon self-representation rather than representation by ‘trusted others’. I suggest the metaphor of family is useful because it alludes to an ideal sort of moral community, moving away from the current reality, one of marginality (or liminality), which seems far from ideal.

The particular personal style of the two local organisers might have played a significant role in this case. Their narratives contrast the past, of dependency and insecurity, with the present and future, in which farm workers are learning to support each other. Their narrative styles, however local and particular, resonate with the identity that the NGO appears to embody.<sup>43</sup> Whether it is a personal rhetoric or organisational philosophy, or both, it is clear that these ideas are being actively embraced by farm workers themselves. Their source and the popularity of such a notion is not outside their own particular societal normative codes. Farm workers already occasionally depend on one another (see Chapter two), in the locus everyday life on the farm. Nobody in the meeting questioned the notion that they might see themselves as a family because this notion is already embodied for them through paternalism – it is just the negative aspects that have been removed. Because it is so

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<sup>43</sup> Whilst I was first working at LHR, Walter told me about the WFPs ten year anniversary party that he had been to the night before, which had a family theme, and where an intricate and lovely patch work artwork made by women farm workers was displayed (February 2002, fieldnotes).

familiar it becomes a very useful and somewhat emotive schema that has been adapted into the language of fairness, equality and social concern. Below, I discuss the notions that have arisen from the examination of these ethnographic examples.

### **Testifying to Marginality**

Despite the laws that propose to address inequalities for farm workers, they continue to be marginalised from law, society and the state, and their position in relation to the farmer is contested by the way laws fail to improve these relations of dominance, but merely seem to enhance them. With the new laws farm workers are in a 'contested state of being' (Coutin, 1994: 283), as their lack of knowledge of laws and available help makes them vulnerable to illegal eviction. The law itself means that only few farm dwellers are protected and fear of eviction is prominent among them. The style promoted by Eveline and the organisation she works for is one of reducing the secrecy and competition between farm workers that have been part of the success of paternalism and that continue to be problems for them when they attempt to defy the authority of farmers. By overriding this with a sense of solidarity in a moral code that is familiar to farm workers (the family of the farm becoming the idiom through which this solidarity is motivated), sharing problems and finding legal solutions also make the legal more familiar to farm workers. But these kinds of testimonies do more than just raising legal consciousness. They are educating farm workers in a new way of relating to each other; of taking responsibility for each other.

A further example is drawn from a Women on Farms Project scheme which educates people about domestic violence, using theatre to explore alternative behaviour. I recount below one such play that a theatre group started by the Women on Farms Project performed for an audience of approximately 300 farm workers and activists following a march in Stellenbosch on Womens' Day (12<sup>th</sup> August) in 2003. By describing this piece of theatre, I elucidate the manner and style of pedagogy of the testimony; the way in which particular values are imparted by the women to the men and children of their own families. By turning what was formerly a private matter into one concerning public morality, this performance promoted the kind of public witnessing already inherent in the system of paternalism but gave it a moral message. By showing people witnessing domestic violence, this drama might motivate people

to report it. Moreover, it might prevent domestic violence. It was important, perhaps, that if the positive moral code of the family was to be used as a forum for uniting farm workers, then domestic violence as one of the most negative aspects of family life had to be addressed. And if farm workers were to act as a family, the moral code of protecting each other (instead of relying on protection from the farmer against each other) had to be transmitted.

The five minute play was performed by a group of coloured women farm workers. One, wearing blue overalls, played a drunk man. Another played his wife, and they dramatized an argument. They acted out a violent scene, but were joined on stage by three other farm worker women, who lectured him with pointed fingers on how he should not be hitting his wife, and they protected her and showed 'him' how scared she was. The final scene was of the man and woman making up and him showing remorse and proclaiming that he would never hit her again. In the play, the man who had been violent shows genuine remorse and an understanding that it is wrong to commit violence towards any woman. The scene was a kind of testimony. By dramatizing a familiar scene in this way, the players were making public what is known to be happening within households on farms. By adding the judgement of the other women, they were showing that this way of communicating was morally wrong and should not be tolerated by others.

Another aspect of this as a testimony is the way that law is not referred to in the play, but implicitly the three 'neighbours' are taking law into their own hands. Neither have they referred the incident to the farmer, who did not appear in the performance. The final scene, in which the 'husband' expresses remorse and pledges never to hit his 'wife' again, is the proof that farm workers reeducation of one another can have a dramatic impact on people's personal relationships.



*Figure 3* Women on Farms Project (WFP) drama

Public testimony has legal and religious connotations, and though the law may not be so familiar for many farm workers, the idea of testimony is not unfamiliar for many of the Christian farm workers. Public testimony also enables familiarity with legal testimony. I have included the two ethnographies cited above as examples of public testimony. I also examine a drama that the same NGO put on for Women's day at the end of a march the purpose of which was to teach farm workers that domestic violence is not a private issue, but a public one; that farm dwellers should not tolerate or ignore domestic violence of neighbours. For each of the three narratives that I have provided, their testimonial style represents a sort of shifting of power relations.



*Figure 4 WFP Women's Day march in Stellenbosch (12<sup>th</sup> August 2002)*

## **PART II**

### **Chapter Six - The Security of Farm workers Project**

Having briefly introduced ESTA and described its provisions and some of its limitations in Chapter one, in this chapter I focus on how lawyers and paralegals working for the SFP, implement this law. This elucidates the life of the law (Nader 2002), not only in its implementation, but in other activities surrounding it, such as in training for farm workers, thus exploring ‘multiple layers of law’s power’ (Just 1992: 6). We see how state law has become outsourced to NGOs and activists.

First, I examine a large case that was taken by the project at around the time of my arrival, to show some of the processes involved in an ESTA case and the attempts of the project to remain active in working with these farm evictees while the case was postponed. The sorts of activities described therein indicate some of the life of the law I refer to above. These descriptions also draw our attention to attempts to raise legal consciousness, as this is seen by all as a key tool in preventing arbitrary evictions and unfair dismissals that lead to evictions. I then describe a meeting in which a settlement was negotiated so that the need to go to court was bypassed, and also in which the lawyer attempted to address one failure in the law’s implementation. Next, I describe how the law was limited and some of its unintended consequences (see also Chapter one) followed by a discussion of whether this law is impeded by farm culture of paternalism. Here I address the question of whether this law is further reproducing paternalism or whether paternalism is impeding the success of the law, or both. This leads back to a larger question regarding the continued plurality of law.

During my work in the office of Lawyers for Human Rights in Stellenbosch I looked at the ways in which the NGO worked in a human rights paradigm to assist farm workers and dwellers in realizing their rights to security of housing on farms. The Security of Farm Workers Project (SFP), the main project of the Stellenbosch office of LHR, provided legal resources to occupiers (of farms) who are the legal beneficiaries of the ESTA legislation. The project’s primary development aim was to ‘provide ... interventions which would lead to the security of tenure and protection

of fundamental human rights as enshrined by the South African Constitution'.<sup>44</sup> The name of this project derives from the name of the law, the Extension of *Security* of Tenure Act (emphasis added; from here, ESTA, or the Act) itself in part a result of the Constitution. From my first encounters with farm dwellers, NGOs (LHR in particular), unions, organizations that included all of those role players, such as the Farm Worker and Dweller Coalition, and other interested parties (including paralegal organizations, rural advice offices and also government departments), the issue of legal and illegal evictions of farm occupiers from farms was of urgent concern. As has been noted in previous chapters (in particular, see Chapter one), evictions of farm workers had increased dramatically in the late 1980s, and rose spectacularly from 1994 (the year of the first democratic elections) onwards, a situation that was clearly not in line with the new Constitution. ESTA was introduced in 1997 to address the arbitrary and mass nature of farm evictions.

Most of the key actors involved in the project, including lawyers and paralegals, expressed their frustrations at the law's limitations. Far from protecting security of tenure, they argued, ESTA was guaranteeing the mass eviction of farm workers. Walter told me that as soon as the gazette was released, a brief examination of its provisions was enough to know that protection for most farm dwellers would be extremely limited, and that the loopholes would possibly only serve to make the situation worse (fieldnotes, April 2002). Project workers saw their role as one of education of both farm workers and farmers in awareness of the law and its provisions, but they were aware of the inherent weakness in increasing farmers' awareness. Since its inception, the project had dealt with arbitrary and sudden evictions, and had had some success in cases where emergency proceedings had been taken up. There had been some criticism of this from commentators within the movement:

Unfortunately NGOs that provide legal services do not have sufficient financial resources and personnel to defend every eviction case, but rather opt on the whole for precedent-setting or public interest matters. This does not protect most occupiers from unlawful eviction (Hall et al. 2001: 4).

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<sup>44</sup> Project description, taken from the LHR Stellenbosch SFP annual funding proposal.

Thousands of individual or small cases were left in the hands of paralegals who were not allowed to represent farm workers in court. As I began working at LHR, there was one large case and several small cases then under judgment.

The main problem lawyers and paralegals encountered was that too many farm workers came to them for assistance when it was too late; when they had already willingly left the farm, often under duress from the farmer. In these cases (as in the case of Beauty in the introduction) the law offered them little protection. In cases of forced evictions, however, where, for example, farm workers came home to find their locks changed and their belongings outside, emergency applications could be made on the basis that the eviction had been illegal. The project had had successes with such cases and had gained media coverage in addition, a factor that was considered important by the project as a way of publicizing the problem. But there was concern that most eviction cases were not going as far as the law because unscrupulous farmers were coercing farm dwellers into leaving the farm with arbitrary payments and offers of assistance with building materials.

Even though it was felt that raising awareness of farm dwellers' rights to ESTA among farmers might offer some protection, project workers were also aware that if farmers knew more about the law they would also learn how best to protect themselves: how to legally evict farm workers. The key loophole was that should the farmer proceed to evict through legal means, by getting a court order from the magistrate that gives notice, for instance, unless the farm dwellers had automatic right to tenure, farmers could easily evict most farm dwellers.

This chapter addresses the crux of the unintended consequences of a law that was supposed to address these issues. These unintended consequences are central to political and legal activism, to promoting change in relations on farms (eradicating neo-paternalism) and to promoting increased 'access to justice' for farm workers and dwellers. 'Access to Justice', a banner at the forefront of NGOs' and advice offices' legal activism, and adopted by government departments (such as the Legal Aid Board), is symbolic of rural activism's attempt at the legal inclusion of indigent people so that they may empower themselves. It is also evident in programmes of education for farm workers; and is emblematic of the government's attempt at



creating a universalizing and unifying ‘culture of human rights’ that addresses poverty. That this represents a merging of interests is no real coincidence as commentators might argue that the government appropriates the idea(l)s of the civil society sector:

The government uses the NGO sector to fulfill certain delivery functions because this sector is seen to be closer to communities. NGOs have traditionally attracted people who care about grass roots issues and are driven by a passionate belief in good causes. They have often played a watchdog role over the performance of government institutions’ (Oct 25-31, 2002: Mail & Guardian Comment and analysis).

The following section looks at a large case that was pending for the SFP whilst I was doing research and some educational activities that took place around it whilst the case was indefinitely postponed.

### ***Olive Grove Farm: threatened evictions and the activities of the SFP***

My introduction to the case of Olive Grove Farm<sup>45</sup> was early in my fieldwork with the SFP at Lawyers for Human Rights. It was the biggest case that the project was dealing with, and proceedings continued until well after I left South Africa. I met the residents of Olive Grove Farm when I first began fieldwork at Lawyers for Human Rights, and I continued to follow the course of their case during the remainder of my time in South Africa. When I first met them, the lawyer litigating on their behalf told me that most of these farm workers were illiterate and ‘it is very difficult to explain to them their position, especially since they don’t really understand any English’ as his Afrikaans was limited. This was one of my first encounters with farm workers that were facing eviction. ‘They are very poor, not educated’, he explained, ‘and for most of them they will be evicted. They see in us a chance to remain in their homes but there are only one or two households [of nine]<sup>46</sup> that stand a chance of winning their case. I have to explain this to them’.

A large group of about 15 coloured farm workers, the men in blue overalls, arrived at the office that afternoon. They sat outside since there was not enough room in the waiting room of the LHR office. Activities on the case commenced. People were

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<sup>45</sup> The names of all farms have been changed.

<sup>46</sup> Though only six were handled by the project. The other four had been taken on by Stellenbosch Legal Aid Board.

called in to the office household-by-household, in order to take statements. This process is prescribed. Family and individual details are noted, such as how long they have lived on the farm, dates of birth and the specific details of the situation that had led to each household being told they were to be evicted. Any paperwork detailing how tenancy was originally procured, such as contracts, was requested. Specific to the lines of questioning is the context in which the farm workers have been retrenched or made unemployed. In this case, the work of the farm had changed, as the farmer had reduced the vineyards and had moved into the production of olive oil. He had sold some of the land, and the core of workers needed had shifted, so that most had been retrenched because they were no longer needed (operational requirements). In some cases, they had been laid off prior to this for other reasons, but their cases had not gone to the CCMA. Lack of awareness on their part had been one of the factors that contributed to their being threatened with eviction, as they might have approached the CCMA to claim for unfair dismissal. At best, this would have guaranteed employment for some of them; and at worst, their CCMA finding would have strengthened an ESTA case. I note this because the description that follows is of activities with the farm workers while they were waiting for their case to proceed, which is at the heart of the argument here: that as well as ESTA law, the NGO was keen to promote other labour laws that they saw as having a causal relation to the beginnings of eviction proceedings. This point also relates to the importance of rights training for farmers and farm workers that many paralegals saw as essential to changing the structure of farm social life. They likewise saw an awareness of all relevant labour rights as important. Despite many perceived limitations in labour law, activists, paralegals and project lawyers at Lawyers for Human Rights conceded that workers ought ideally to be more aware of the labour and anti-eviction laws that do exist.

A few weeks later, these farm dwellers were asked to individually sign affidavits at Stellenbosch Police Station. The affidavits containing details of each individual's tenure had been typed by the project lawyer dealing with the case. The affidavits were to be signed at the police station and as some could not write they were asked to put a cross in place of the signature. Each activity, including those first statements, involved many of these farm workers taking time out from their current employment

which, at times, seemed futile, particularly to the farm workers who did not understand some of the interruptions to the process. Why should they all traipse to the legal office when the gains were apparently so meagre (from interviews conducted with them over a year later July 2003: Fieldnotes)?

At least for these two instances, it was necessary that each individual must be involved, but taking time off work to go to court in order to be told that the case was postponed was frustrating. A court date was set and they were all summoned again to come to court. On this occasion their presence was unnecessary. The farmers waited outside the courthouse as we heard that the case was postponed because the lawyer acting for the farmer had not finished preparing his case. Afterwards, the project lawyer explained to them that the case had been postponed, told them the date, and added time it might be better if they only sent one or two representatives in order not to waste other people's time in case of a postponement. The lawyer was frustrated as he had worked hard to meet the deadlines but the farmers' lawyer had not provided the answering affidavits in time. However, he told me, 'at least this buys them more time. And I am happy that this magistrate is presiding. He is a cool guy. Another might have had us straight into the court whether the case was ready or not'. The importance of the character of the magistrate was recounted many times, often in the retelling of particular cases. Local Afrikaans magistrates in hamlets such Grabouw, I was told, were friends with and therefore biased in favour of land owners. It seemed this magistrate might be fairer, or was he more biased in favour of farm dwellers?

During my time in Stellenbosch the case was postponed several more times for various reasons. The project lawyer who was working with the case explained to me that in many ways this was a good thing, emphasising again that only one or two of the households had a chance of winning their cases and either remaining on the farm or being provided with suitable alternative housing:

For most of these people they will be evicted. Most of their cases are very weak in terms of ESTA. So although for them this is very frustrating, actually it allows them to stay in their houses for longer and for some of them to make other arrangements in the meantime. Especially now that it is winter, it is probably better for them that the case is postponed, as they at least have somewhere to live for now. But this is not ideal. (Field notes, May 2002).

After the case had been indefinitely postponed, onsite development of housing, with the Department of Land Affairs purchasing the land and municipality participation, was discussed.

In order for the project to be proactive with the evictees while they waited on news of their fate, further activities were arranged for these farm dwellers. From their case notes, the project lawyer noticed that as workers they had not been aware of their labour rights (for instance, right to representation at the Commission for Conciliation, Mediation and Arbitration (CCMA) in cases of unfair dismissal). Nowadays most of them worked as contract labour on other farms. One assumption that I noted from this particular project, and from other projects including the work of many paralegals, was that with knowledge of labour law, some workers might not have to go through eviction at all.

With the Human Rights Education Project (HREP) (another LHR project, whose administrative base was at the head office in Pretoria), a training workshop for these evictees was planned. A time and date was arranged with the foreman who had been the contact for the evictees (he had a mobile phone), and he was also asked to arrange a place for the meeting with the farmer. On the day of the workshop in July, the HRE project co-ordinator flew in from Pretoria and met with the lawyer working on this case to discuss this training. I was asked to accompany them to the farm to take notes of the meeting and to take photographs that would be used in both projects' bi-annual funding reports as well as in *Die Occupeerder* (The Occupier), the quarterly newsletter of the Security of Farm Workers' Project. I was the first to arrive at the farm and was met by the foreman who told me that everyone was in their homes and that I should go to one particular house and ask for one woman who would call everyone together, while he went to collect the key to the farm's meeting hall. At this point I had not been to many farms but I could tell that these houses were in a considerable state of disrepair. I was not invited inside while a child went in to fetch her mother who sent the child round all the houses to let people know that the meeting was about to take place. Outside the ground was stoney, there was grass here and there, and a lot of junk littered the ground. One or two of the houses had their windows boarded up. Children playing outside came to look at this curious

visitor. The same people I had met outside the LHR office and the courthouse began to emerge from their houses, but nobody else joined them.

By the time Kamal (SFP co-ordinator) and Gideon (HREP co-ordinator) arrived, the foreman had discovered that the farmer was refusing to unlock the door to the meeting hall, and a gathering of men and women had congregated outside the hall in the waning light. They decided to continue with the plan and to conduct the training session outside. Many of the children remained gathered around me (the only white person) tugging at me and asking to be photographed, so it was somewhat difficult to hear what was being said in the training workshop, which lasted no longer than about half an hour because of the cold and lack of light. The Basic Conditions of Employment Act (BCEA) and the Labour Relations Act (LRA) were briefly explained, specifically rights regarding retrenchment and notice, as well as who could be contacted in cases where they felt they had been unfairly dismissed. In addition, the ESTA was also briefly explained, even though most of the people there had already been threatened with eviction and others not threatened with eviction remained in their houses. The majority of the group were men and of the handful of women there, one was a widow, who faced eviction because her husband had been the primary occupier but had died.<sup>47</sup>

In the light of this ethnography, it can be seen that the project was keen to be active in doing something for the dwellers while they waited for a court decision. It was considered that this kind of situation might be avoided in future. Ironically, a similar situation, it seems, is unlikely to be encountered again by these farm workers: unless farm dwellers' rights to housing tenure are protected by ESTA (and this is fairly rare), eviction or alternative housing guarantees that they will not get housing on a farm, as tied housing is no longer a viable option for farmers to take. It was still, however, seen as useful to educate people on their labour rights in case of future need which would likely arise. The training was given in English and translated to Afrikaans by the foreman. How much of the meaning was conveyed was not clear,

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<sup>47</sup> It seemed that she had one of the strongest cases because of the 'right to family life' clause in section 6 (2) (d) of the Act. Her husband, who had been a permanent occupier (and therefore immune from eviction according to the Act), had died. As seen in chapter 1, provision of one year's notice of eviction is provided in the law for the widow of an occupier that has died, but the right to family life, if pursued, might allow her the status of permanent occupier.

there were nods of understanding and it was felt that the workshop had been successful, in spite of the lack of questions from its students.

There are various aspects of the process of this case that are worth discussion. First, both individual and family statements are taken by the lawyer. The law itself deals with the individual (as the individual relates to the state), yet conditions of employment and tenure, as we have seen earlier, rest on the family. A statement then must include how the contract was drawn up between the farmer and, usually, the male head of the family. For the lawyer, this was important as he was later to draw on the right to family life nested within the law, a point to be returned to with force in the conclusion. Here though, it is only necessary to point towards the apparent necessity, in all the cases, to take all the details of each household's agreement with the farmer as evidence. This is important to any ESTA case.

From this point on, few aspects of the case are clear to the farm dwellers other than that they are called upon at certain instances, and are made to wait for a decision. This point was made to me in follow up interviews that I conducted with the evictees. Since the farm workers are mostly illiterate, they have little understanding of the process of the case and are marginalised from it. Though this was addressed later on through rights training, though it could be said that this was too little, too late.

Third, the case was strong for only two or three households; for others, the postponements bought them time. Although this may have been appreciated by the farm dwellers, they later told me how they had been mainly frustrated by the wait – it had heightened the sense of insecurity. Also the demands on their time – to be available for court hearings and signing affidavits – meant that those working had to take time off work. This further heightened their sense of insecurity, as their already precarious sources of income were put under stress.

The magistrate's character was important to the outcome of the case. This was a familiar view at that stage of fieldwork. However, it was mediated by the fact that other cases that had been decided against the fates of farm workers had been referred on to the Land Claims Court for review, and had won, as had happened in the Mooi Plaas case. But the point remains that rural justice rests on the personality of white

magistrates who have vested interest, particularly in more remote rural areas. Such imbalances of the system were throwbacks to apartheid, and justified comments from paralegals particularly that the justice system had not undergone substantial changes since the end of apartheid.

Almost a year later I visited the LHR office for a meeting with Kamal to discuss the development of this case. He told me that the farmer's lawyer had still not provided answering affidavits and that a court case was still pending without a court date. He told me that he had been corresponding with the DLA but that it had no money in its budget for an onsite development, so this discussion had been futile. When I interviewed the farm workers a year later they were not aware of these ideas, and it seemed that again these were ideas that took the form of activities to be undertaken whilst the case went took its painstaking course.



*Figure 5 Human Rights Training at Olive Grove Farm.*

The description captures the extent of the waiting involved for farm workers when ESTA cases go to trial. Paralegals and lawyers wanted to provide this kind of training to farm workers in anticipation of, rather than after, retrenchments or the

threat of eviction, so that farm dwellers would have a better idea of what to do, what their rights were, and who to approach for assistance. In this case, the training was provided far too late to be of much help to these evictees. Even the project lawyer saw it as something to do to fill time whilst they awaited further news. It was also noted to me that, despite its name, the Security of Farm Workers' project could not do much to secure tenure for most of its clients, since ESTA was conspired against them. However, the project itself was 'seen', in its project report and with photographic evidence, to be 'doing something' – and the currency of legal literacy training was high in value at this time.

### ***Meeting between project lawyer, farmer and evictees***

In this section I describe a meeting in which the terms of an eviction are negotiated in the presence of the farm owner and the dwellers, between his lawyer, Rosey, an SFP lawyer, and a representative from the Department of Land Affairs. This meeting describes how the lawyer avoids an unnecessary and lengthy court case through negotiation of a settlement, an activity that was far more frequent than court cases.

One morning, towards the end of my time at Lawyers for Human Rights, one of the SFP attorneys, Rosey came into my office and told me excitedly that I should join her in the meeting that she was in. It had already started and had been interrupted whilst the two parties in the boardroom took council. I gladly accepted the invitation and asked Rosey why she was so excited. She told me

This is quite unusual, because my clients first contacted me and we had a meeting. When I contacted the farm owner about the case, he called back and asked if we could arrange a meeting all of us together, he and his lawyer and me and the occupiers, to arrange the terms of a settlement. I decided to invite Kay from the Department of Land Affairs to witness the settlement and also to assist, because if they arrange the building of a house we need to know that there is land available. The dynamics are really interesting, you should go inside.

It was clear from her remark that there was something unusual going on: something beyond the normal farmer/ worker dynamic. In a visit to a land owner who had wished to evict his former employees we (myself and this same lawyer) had been told that the farm dwellers were like children; this could be said to be the attitude that this lawyer and paralegals were used to. What was more unusual was that a



representative from the DLA was there at this stage of the proceeding. In chapter 4 I discussed a case in which farm dwellers were still awaiting availability of land for their new houses. This was a move on the lawyers' part to attempt to avoid such problems in the future of this, and other, cases.

The tension in the room was evident. Around the big boardroom table sat Kay September, from the DLA, two young women in their early twenties, huddled at a corner of the meeting table with a much older man, whom I presumed correctly to be their father. Sitting on the opposite side of the table to Kay were two, smartly dressed, imposing middle-aged white men who were the farm owner and his lawyer. Rosey came back into the room and the meeting resumed. Rosey said that they should continue with the negotiations and that the previous amount that had been tabled by the farm owner's lawyer was unsatisfactory for the building of a house. The dynamics of this meeting were, as Rosey had said, very interesting indeed.

The young women spoke articulately on behalf of the family, and their father remained almost wholly silent throughout the meeting. The farm owner spoke mostly for himself and within half an hour a settlement was drawn up between them. The atmosphere was remarkable, as it was conducted with a kind of business efficiency and dry humour between the clients, whilst the lawyers for each party spoke only where necessary. Rosey, the other lawyer and Kay September remained officious and attempted to keep the topic to the business of the hour as the two parties sarcastically slighted one other whilst simultaneously coming to an agreement.

The negotiations were so rapid that I only had chance to make swift notes such as 'settlement, R10 000; for building a house, but no land... discussion of amount... not enough... Discussion of building of house, where? Farm owner suggests Delft – decisive no!... Discussion of amount needed to build house... farmer offering to build house for R12 500'. Where I included exclamation marks was the point at which the discussion became very quick and sarcastic between the two young women and the lawyer. 'I will provide a house for the family', said the farm owner, 'so we will look into where to build the house, Delft perhaps'. Delft is a township on the outskirts of Cape Town. One of the young women, at this, spoke up, 'Not in Delft. We won't live in Delft.' 'If we find somewhere in Delft then that will be

where you'll live. What's your problem with Delft?', asked the farm owner. The same woman answered, 'It's too noisy, and we won't live next to a *shebeen*<sup>48</sup>, we have study to do and university to attend, so there's no way we'll live next to a shebeen, but we don't want to live there anyway.' The farm owner, sarcastically, 'Well, where would you like to live? Maybe we can arrange for you to live next to a golf course instead? Would you prefer that?' The other young woman: 'Yes! To a shebeen!' The farm owner: 'Do you play golf then?' Both women responded, simultaneously, 'Of course not.' 'So what do you do?' 'We play pool!', and one of the women, Loretta, and added, 'I expect you play golf!' Rosey asked that they keep to business and the negotiation quickly continued. The above exchange was full of derision but the father of the two women kept very quiet. It was agreed that Mr Swarts would build the family a house with R20 000 when a suitable piece of land became available, of which the DLA would notify the parties. Until then they would stay in the house on the farm.

According to Rosey, the settlement was a relief. Had the case gone to court as an ESTA case she thought it was unlikely that the farm dwellers would have won. The background to the case was that the family had moved out of their house on the farm during winter because of some leaks and had moved in temporarily with some relatives in a township. When they had moved back into the house they had found a notice of eviction from the farm owner. According to ESTA, the right to residence is annulled if tenants are away from their house for two months or more. Furthermore, the fact that the family had been living away from their home seemed to suggest that they had alternative residence. Apparently it was only the farm owner's intervention and willingness to negotiate that had secured the family's continued residence and this settlement. This, she told me, was why she had not argued too much with the amounts that the farm owner had offered, because she knew if they refused the case might go to court and they would almost definitely lose. She had been annoyed with the young women for arguing with the farm owner as she had worried that this might have affected the bargaining.

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<sup>48</sup> Township drinking establishment

As the meeting ended I spoke to the two women about meeting up again some time and they asked me more about my research. One asked me if I knew of PLAAS (the Programme for Land and Agrarian Studies) at University of the Western Cape. When I said that I did, she told me that she was in the second year of her degree programme and that she had been studying a course at PLAAS about historical relations on farms, and neo-paternalism. She commented that this was the way things had been for her parents but that situation would have to change now. As we were on our way out of the room, the farm owner turned to me and scoffed, 'Human Rights! You know, this country will become like Zimbabwe if we're not careful! Human Rights! What about *our* Human Rights, as farmers?! Who's going to look after them?' This was a sentiment that was quite common among land owners, especially in light of recent events in Zimbabwe. For most farm owners, the words land reform brought brutal images of violent farm seizures to which plenty of attention had been given in the South African and world media. After they had gone, Rosey told me that the farm owner was also a practising lawyer.

This example shows how a new generation of literate and educated farm dwellers are challenging more traditional ways of relating between farm dwellers and owners. But it may also cast a legalising slant on the movement away from the frame of paternal or neo-paternal relations. What seems to be happening in this dialogue is that 'the object of the dispute and the normative framework to be applied are negotiated as the dispute proceeds' (Merry 1994: 39, cf. Yngvesson 1988, 1993; Mather 1980, 1981). Merry applies this to disputes in public court case settings, and the meeting is certainly less formal than this, but in the same regard as Engel's point, this dispute is 'expanded in terms of a new framework outside existing categories for events and relationships' (ibid. 39-40). However, in contrast to paralegals in the next chapter, lawyers do not attempt to transgress the border of the legal and the relational.

In fact, the dynamic described does not change the relationship of farm owner and farm dweller. As Rosey pointed out, had the dwellers gone all the way through the law, they would have been evicted; what this meeting afforded was in fact protection of security of tenure due to the farm owner rather than due to ESTA (though the prior existence of this law guaranteed at least that such negotiations could take place). One action that this lawyer took stands out as a reaction to failures that this law has

procured for other evictees. The example of Mooi Plaas in chapter four shows how even though a court case was successful in garnering housing for the evictees, years later the Department of Land Affairs had still failed to deliver on this promise. Rosey attempts to circumvent such an outcome in this case by including a representative from the DLA in the negotiation of a settlement, in order to guarantee that if a settlement for provision of a house is successful, there is also land available for the building of the house.

The rest of this chapter is concerned with the dynamics of such shifts in tendencies and relations. Paralegals more often than not told me how human rights on farms were abused, evictions were proliferating at an alarming rate, leading to homelessness, and a grim picture was painted of farm workers' lives when legal intervention is not achieved. Legal literacy is just one of the many ways in which NGOs like Lawyers for Human Rights are attempting to transform relations on farms, but how is civil society in general attempting to reshape them?

In the example of Olive Grove farm, some unintended consequences of the ESTA are evident, such as the insecurity bestowed by the length of time, and the distinct likelihood of an unsuccessful legal outcome for most of the evictees. Below, I discuss more generally the unintended consequences of this law.

### **Unintended consequences of ESTA**

The original vision of ESTA, as seen in Chapter one, was to fulfill requirements of the new Constitution and to redress the burgeoning eviction crisis. Hall et al. (2001: 5) identify 'three stumbling blocks in the realisation of this vision: the justice system, farmers' responses and ongoing gender bias'. The justice system, they argue, has not been transformed by apartheid. Indeed, in the experience of LHR and the Centre for Rural Legal Studies, rural magistrates are often in league (at least at a social level) with local farmers. Additionally, police regard such matters as private or domestic disputes, despite the Act's criminalization of eviction without notice and effective eviction. As Hall et al. put it, 'in rural towns, the social networks between magistrates and the police, on the one hand, and farmers on the other, have contributed to the justice system's failure to take ESTA seriously and to enforce occupiers' rights' (2001:6). According to the SAHRC report on human rights in

farming communities (2003), ESTA is perceived by farm owners ‘as draconian, punitive and unduly onerous’. Due to their lack of support for the legislation they consider it justifiable to circumvent the law, as far as is legally allowed:

(We) think it is right where there is a law that is hampering your operation and there is a way around it that is legal, you can legally handle it that way (2003: 61)

A legal way for farmers would be to evict farm dwellers by the law, though this does not always happen, as we see in the introduction of this thesis. According to this report, which I discuss more thoroughly in chapter eight, farm owners, dwellers, and police, all misunderstand this act and therefore take actions based on their miscomprehension of the law. However, all too many farmers have begun to understand it and magistrates’ courts are allowing legal eviction orders. It also underlines that some responsibility for this negativity from farmers around this law is due to the formal organizations that farmers belong to ‘spreading misconceptions about ESTA, thereby misleading farmers and encouraging them to think negatively about [it]’ (op. cit.). In addition, farmers argued that workers who talk about rights often make too many demands and are the trouble causers of the farm, using the language of rights to excuse laziness, drinking and tardiness. As in the example of Nikki Du Vries in the introduction, this could be said to be a ‘relational view’ (Conley and O’Barr, 1990), in this case, taken by the farmer, as he refuses to deal with the legal rights bearing worker, but recognizes only a lazy excuse maker.

Reactions to this law have varied. Many farmers claim that it infringes their own property rights, a notion that was given much attention to during the negotiations leading up to democracy. Many land owners are nowadays accustomed to the provisions of ESTA and have used them to evict people within three months of retrenchments – this, according to ESTA, constitutes legal eviction, though an eviction order must also be granted by a magistrate’s court. Ewert and Hamman (1999) cite responses from their interviews with farmers in various wine producing regions, citing that many farm owners

have adopted an explicit policy of not employing anyone above the age of forty, to prevent workers from qualifying for life long tenure on the farm. Others have resorted to cutting their permanent labour force down to a minimum, the recruiting of workers off-farm engaging a labour

contractor... In extreme cases, farmers may flatten worker housing, as is already happening in isolated cases (217).

Indeed, a labour contractor that I interviewed attributed the success of his business to mass retrenchment and ESTA; of which rapid mass externalization of work has been seen as one result (see also Barrientos and Kritzing 2001:82; Kritzing et al. 2004).

Most commentators on land reform agree that 'on commercial farms...access to housing and employment was and is dependent on a related man having employment' and that ESTA permits 'the eviction of women living in the same house as men if the man is legally retrenched or evicted' (Greenberg 2004:10; see also Hall et al., op cit:9; Du Toit and Moosa 1999). The 'right to family life' clause in the act (discussed in detail in the conclusion) provides some with protection of their tenure, but the ways in which power is pre-determined on farms means that their remaining on the farm might be unsettled by paternalistic dynamics being reasserted. I discuss this in more detail in the section on paternalism and ESTA.

The 'Act' regulates the tenure security relationship between the occupier and the landowner on rural land in South Africa. But this is by no means a simple law, and the range of agencies and agents involved in its potential success make it difficult to reach all of those concerned and educate them on its provisions. From its inception, it was ignored by farm owners who continued to evict farm dwellers illegally, relying on the farm dwellers' ignorance of this law. This is exemplified by the description of Beauty's family's eviction. If they are evicted and leave the farm, evictees have little recourse to the law. In cases in which illegal and enforced evictions had taken place, even turning to the police would prove worthless for evictees, who tended to report to paralegals that the police at worst treated them with derision, and at best informed them that this was a domestic matter and that they could not get involved.

Nikki was intimidated by having his electricity cut off into leaving the farm of his own accord. This was not actual eviction, but was referred to as 'effective' eviction by lawyers. Even though we were armed with the knowledge that cutting off the electricity of a permanent occupier is illegal and a criminal act, when we approached the police on Nikki's behalf, they did not take this illegality seriously. Because Nikki had not actually been evicted, due to his protection under the act, there was no other

legal process through which the action could be contested (such as if an ESTA case was taken up and a lawyer became involved).

The assumption that there is one, individual ‘occupier’ has a range of consequences. It is the ways that the law is played out through representation that aims to counteract this individualistic notion. However, the law itself seems to replicate the assumption that there is a single occupier, whereas it was always assumed that a farm worker would be entitled to tied housing if he had a family. In the terms of original tenancy agreements, ‘the occupier’ has tended to be male, and this gendered bias continues to be assumed within ESTA.

A more general consequence of this Act is that when evictions are ordered following procedure of the Act, if the occupiers are not automatically protected, whether directly by being, according to the Act, a permanent occupier, or indirectly through the right to family life (to live with a member of the family who has permanent occupier status), then it is insecurity that characterises their housing and welfare conditions. This insecurity is one of the unintended consequences, because the rollout of the national housing scheme, RDP, has faced so many challenges that a large number of South Africans are on waiting lists, or, once they are handed the keys to a house, may find that somebody else has also paid the municipality for the same plot. Buying time, then, was one way that the dweller could go about finding somewhere to live themselves, which they sometimes did, through unofficial channels of family. This usually meant continuing in some sort of relationship with the farmer. A court case would buy even more time, though, as I was told, fewer and fewer cases were being heard by Land Claims Court due to the fact that many evictions were now being carried out legally. In addition, availability of land is a problem that has beset ESTA cases that have gone to the Land Claims Court. Such is the problem with Mooi Plaas case discussed in chapter four, where representation through all stages of court hearing has had the result of leaving farm dwellers without suitable housing or access to any basic services.

### **The persistence of paternalism: an unintended consequence or a cause of Law's failure?**

If one asked farmers, they would explain that ESTA has changed their relations with the farm workers. Permanent tenure means more expense for the farmer at a time when increasing competition due to prices set by European supermarkets makes their business less secure than before, when subsidies and price protection were automatic for white farmers under apartheid rule. Hall (2003) reports that farmers prefer to leave houses empty than house farm workers, which is a costly business. They attempt to move the occupiers on before they become permanent occupiers under the law. This has had a part in the farmer reducing the core of permanent workers and hiring off farm labour from contractor. On some farms, the houses do not stand empty, but house people who work on other farms and pay rent and services like electricity and water. Further, in the example that I discussed in chapter three, those farm workers who have shared the experiences of being retrenched and evicted to some extent support one another, but simultaneously, their experience ostracizes them from the rest of the community of housed farm workers. Life on the farm is already delineated by gender and race and this law, in addressing these historical relations, appears to further produce separation at least along racial lines.

ESTA is underpinned by history. It is a legacy of apartheid and colonialism. All the laws were put in place to address historical inequities. With this law and also with other labour laws (such as the Basic Conditions of Employment Act of 1997 and the Labour Relations Act of 1995), the very nature of labour and social relations on farms were being challenged, in some cases gradually and in others suddenly. Most of these laws worked to the detriment of the kinds of preferential treatment that coloured farm workers had received from farm owners, particularly in this area; yet this law now appears to concur with some preferential treatment by giving permanent occupier status to older coloured farm dwellers.

Even on the most modern equity scheme farms, it is coming to light that the kind of antagonism and patriarchy that inform paternal discourse on farms, have resulted in farm management setting up trust deeds without taking signatures from the farm



workers, the very trustees.<sup>49</sup> This was a case in which the proposed equity scheme was discussed with farm worker, and they had agreed to it. However, following preliminary discussions, the precise details of the scheme, when it was set up, were not revealed to the workers, and amounts to be paid to and from it were never revealed. It seemed that the farmer was using its existence to his own financial advantage. Such activity is very much illegal and fraudulent but its roots can be seen in the fact that historically, agreements were made and ‘understandings’ come to that were in actuality the rule of the farmer and never had to be documented for the benefit of farm workers (Du Toit 1993). The trust placed in the farmer is part of the paternalistic contract, the idea that becoming a permanent worker and acquiring a house affords more protection and security than living off the farm and acquiring work. Farmers’ tenacity, in this example, combines with workers’ ignorance of such matters, and the age old narrative of protection - the farmer ‘taking care’ of everything - persists. Where the law fails to protect farm workers, all kinds of protection are lost and the relation between farm worker and farmer is severed. But where ESTA offers protection, such relations persist. Dependency, protection; jealousy and insecurity of farm workers still thus rest on both paternalism and, simultaneously, on the law. A kind of legal pluralism is at work here as farm law and state law not only compete but at times alternatively mutually support and affect one another. At this point, then, state law and farm rules intersect and inform. The farm dweller’s tenure might be protected by ESTA; but the farmer may have alternative ideas about the conditions of this tenure. Though this may not necessarily be legal – as per the conditions in ESTA - there is little recourse as the matter is viewed as domestic and petty and the power imbalance seems to justify all.

ESTA has to an extent produced a more fluid community of contestation that has crosscut the boundaries of the individual farms, as described, for example, in Chapter five, in the actions of the WFP. Some farm dwellers hear about possibilities of help and might meet to discuss their problems, but the extent to which grievances have traditionally not been shared informs us of the landscape of paternalism into which ESTA is inserted. The problem with educating farm workers about ESTA and other labour laws was imparted by every activist I met. First of all, it is difficult to gain

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<sup>49</sup> Personal communication: Raymond Bantjes

access to farms to teach the workers about their rights because the farmer may not allow access. Second, if access has been gained, it is mainly men that will come to the meetings, for example in the training of farm dwellers at Olive Grove farm. Most farm workers and dwellers are ill educated, if not illiterate, and the technical jargon and complicated sections of ESTA must be translated in a manner that is accessible. But the main problem is that most evictees find out about ESTA when it is too late. The farmers' explanation of his reason for evicting dwellers is taken as rule because of the paternal authority that he exercises. ESTA may have laudable intentions, but ultimately this law enters into the paternalistic dialogue or discourse in its failure to be disseminated. That it reproduces such relations by entering into this discourse is perhaps the most alarming of all unintended consequences.

In most cases this law, along with other laws made to address racial inequities in the workplace, has produced new tensions between farmers and farm workers. They are based in power structures that have not been addressed by land reform, and that are entrenched even following eviction. As transformed as paternalism may be, it still pervades relations on farms and informs the ways in which farm dwellers access such laws. As Greenberg argues:

In many instances, the laws [formal extension of minimal labour standards and formal protection against arbitrary evictions] are only formalities, since actual relations of power on the ground determine practice. These relations include a powerful white social block that severely limits access to justice or security for farm dwellers, and a weak local state that is oriented upwards and is incapable (or unwilling) to enforce legislation and government policy' (2004:10)

However, such forms of sociality move toward a more coherent network of connections whereby information about legal assistance is passed on (particularly regarding paralegals (see chapter seven)) and, as we saw in chapter five, networks are taking on new forms as they attempt to tackle old problems coherently rather than individually. As with unionisation, often farmers have become more distrustful of workers who organize in such a manner, leading to further tension and threats. This law is simultaneously a threat to, but mostly a stabilizer of paternalistic competition.

With the Olive Grove case highlighted in this chapter, when a case is ongoing, it is likely to go on for some time. For the lawyers involved, postponement of cases is an

ordinary aspect of case law. But for clients, life is put on hold. Project and wider NGO activities are then drawn upon to “fill in”, as it were, at such times, and to be seen to be active in the realm of human rights education. In the example of the training at Olive Grove Farm, it seemed that this had come a bit too late. Nevertheless, it might serve to arm them with information in potential future disputes with farmers. There was a proliferating demand for training of paralegals and the police service in ESTA and much of the work of the project co-ordinator involves such legal literacy training. The alternative to this that was increasingly being pursued was settlement, an example of which I provided in this chapter. Via the intermediary, an amount is settled by both parties to be paid by the farmer for the acquisition of a house or building materials.

A critique levelled at these human rights NGOs is that they limit themselves to big, high profile, precedent setting cases. This is clearly not entirely the case anymore, but it seems that to some extent this is a necessary part of securing the funding for their less visible work: that of training paralegals to settle cases outside of court or training the police to learn the criminal aspects of the law so that illegal evictions might be dealt with at that level.

In the next chapter, I examine the work of local rural paralegals, where we see how they mediate more actively than lawyers in translating relational (paternalistic) problems into legal ones. With the organisation of farms through family like communities, as set out above, paralegals will be as integral as ever towards in achieving legal, rights literacy for farm dwellers. They present the facts of a dispute in similar ways to lawyers, and as Walter comments, they are almost lawyers given their knowledge; but they occupy other, more ambivalent positions, as they transgress various boundaries and make different sorts of representations in their own communities. By arguing this, it is not my intention to overemphasize the contrasts between paralegals and from lawyers; but it is important to note some differences, and in some of these it might be seen why paralegals are not allowed to represent clients in the same way as lawyers (in litigation). For LHR lawyers, the main law they had to deal with was ESTA – though they recognise the necessity of promoting awareness of other laws - and as experts they were referred to by paralegals who needed support in understanding and dealing with parts of the law that did not call

for litigation (for example, drafting a letter to a farmer to explain how a 'permanent occupier' is protected from their threat of eviction by Section 8 (2)(d) which sets out the terms thereof). Paralegals did various other kinds of work, as seen in the introduction, and there was a great deal of pressure on them in terms of the scale of evictions and related legal problems that they had to deal with. My argument is here that when there has been a multiplicity of legal forms for many years, paralegals are mediators between these, translating relational problems, into legal language.

## Chapter Seven - Local Paralegals and rural activism: South Africa's rural Paralegal Movement

During my time in the Western Cape looking particularly at the ESTA law and farm workers' access to and understanding of labour and tenure rights, paralegals were key actors in the endeavour to translate these laws and educate farm workers. Rurally based paralegals operated from advice offices and were embedded in the communities that they served. They were considered by what I have termed the rural legal activist movement in general, and by themselves, to be grass roots activists, dealing with law at the heart of the poor communities they served. Their experience and training had been ad hoc, influenced by problems faced by clients, which – particularly since the end of apartheid – were related to their socio-economic marginalization and lack of security. Many paralegals had grown up either on farms or living from wages earned from farm work, and most, in the past, had had many hostile dealings with farmers when workers had complained about conditions on farms at some point or another.

The rural paralegal activist movement emerged out of direct legal action against the apartheid State. Paralegals in the late 1970s were generally local people with good literacy who would begin by generally garnering legal knowledge on behalf of friends, relatives and neighbours during the time of forced removals. The manner in which they have worked with farm workers and related with the state has changed little since the end of apartheid, even if the political climate has. This chapter shows how their earlier work in the specific communities<sup>50</sup> enabled the establishment of specific roles and forms of authority vis-à-vis their clients in these communities. At the same time, it shows how they relate to and resist the state. Because they occupy various identities at once, they inhabit a marginal space. This further provides them with identification with the rural poor, which attests to their moral legitimacy, to the roots of their work.

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<sup>50</sup> I do not have room here to give the various problems associated anthropologically with the idea of community. Jensen recognises the polyvalence of the word, and suggests that there is at once need for analytical scrutiny of meanings given to it, but that it must be recognised. He argues, following van Beek, that 'it seems to me that community, carries such emotional, political and social force in the everyday lives of people that we need to take it seriously without compromising the sceptical scrutiny that van Beek argues for, ' (2004: 181) where van Beek calls for authors to 'sceptically scrutinize communities' inherent 'coherence, singularity of purpose, democratic inclination, and indeed ecological soundness' (van Beek 1999: 446)' (2004: 180).

As legal interlocutors (Goodale 2002), or critical cultural agents (Merry, 1994: 39-40; 1990), paralegals have consistently operated through the paradigm of human rights. Their constantly self-conscious shifts in identity (cf. Jensen 2004) with ‘moral communities’ they claim to represent, renders them marginal and resistant to state governmentality on the one hand, and dependent on it on the other, as in the formulation of Steffen Jensen’s community workers discussed below (2004: 185-194). Their work ranges from dealing with labour and tenancy disputes to consumer rights; their regular lobbying, advocacy and dispute resolution and the ways they represented farm workers is part of an overall strategy to improve socio-economic rights for the rural poor. The personal nature of their relations with many clients, whom they have sometimes known for many years, means that they are constantly shifting position between realms of law and activism and the apparently polarized (or marginalized) life worlds of their clients. I use life worlds in the same way as Wilson, who in a footnote draws on Habermas’ conception of a life world as ‘a culturally transmitted set of linguistically organized patterns used to interpret meaning (1987)’ (2001: 245). They move about the margins of law and the margins in which farm dwellers are societally located. Rural paralegals are, I argue, ‘betwixt and between’ ‘relational and legal views’ (Conley and O’Barr 1990: 106-7, applied to informal court judges in the US), in that they challenge power imbalances of the farm by using legal means. They do this by attempting to be agents of transformation of farm workers, changing formerly paternalistic roles into ones involving full legal consciousness and citizenship (see chapter five).

Paralegals tend to be the first port of call for farm workers facing eviction from farms. Many have been representing farm workers when involved in disputes with farmers in the past and have much experience in discussions and altercations with farmers who distrusted them as community trouble causers. I include in this analysis an examination of paralegals’ own life histories, or ‘legal-intellectual biography’ (Goodale, 2002: 60), to develop the idea that these actors are, like Jensen’s community workers (discussed herein), claiming to represent and ‘even embody’ (2004: 194) an apparently moral community of the illiterate poor, farm workers. Jensen describes struggles between community workers for legitimacy of these claims for representation:

What is at stake in these power struggles is more often than not the moral habitus of community workers, as it should equal the virtues of the moral community they say they represent. And herein lies the double trouble. First, as community workers carry several identities, they are open to accusations of not sacrificing everything to the community... Second trouble: the virtuous community they claim to represent does not exist other than as the ideological discourse of a morality bound in identity and place (Jensen 2004: 196)

Following Jensen then, and also Wilson (2001), I argue that paralegals are liminal legal actors with ambiguous identity. I use the narratives of their legal career, the history of the movement and descriptions of their activities to demonstrate how they move between various realms. These narratives also illustrate the legal pluralistic nature of farm workers' dealings with law, as discussed in previous chapters. On the one hand, they are legal experts whose expertise is becoming incorporated into an increasingly uniform NGO sector, but on the other, they operate at times on the same margins as their clients as they perform community defined rural activism. Their political allegiances are enmeshed in their politico-legal activism, which essentially is aimed at promoting access to justice for rural poor and marginalized people.

The development of a paralegal movement in post-Apartheid South Africa, as both a community of legal actors and as political activists, results in some interesting political and legal attitudes, both explicit and implicit in paralegal (and other local) activities, in forms of resistance, and in the politics with which paralegals are involved. As well as daily work with Walter, my paralegal assistant, I was further able to investigate and draw some conclusions by doing an ethnography of paralegal training workshops, giving me a fresh insight into dynamics such as the ways that older activist/paralegals relate to less experienced ones, and the ways in which gaps in training and experience are recognized. The most explicit of these attitudes can be seen in paralegals' current relations with mainstream law<sup>51</sup>, with their clients and with the network of rural civil society activists. Paralegals often create continuous and important social commentary and critique of state and legal affairs, new laws and their affects on the rural poor, as well as the ongoing social legacy of apartheid from which they emerge as a movement. They are also providing rights education to farm

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<sup>51</sup> Notable in the relocation of the Western Cape Paralegal Association (WESCOPA) office into the same offices as the Centre for Rural Legal Studies and the Women on Farms Project during my fieldwork period.

labourers, dwellers and sometimes to willing farmers. If paralegals are not acting within mainstream law, they therefore can be seen to be on the margins of it, a point that I will return to repeatedly through the course of this chapter.

Paralegals' roles as legal representatives are becoming increasingly more important in terms of ESTA because, as seen in the previous chapter, NGOs often take on larger cases from paralegals but do not have time to deal with smaller cases. This means that paralegals have to handle such cases up to the point that litigation must be pursued. Only a small proportion of ESTA cases go to court, as most farm workers facing eviction do not fall under the category of permanent occupier. Further, as fewer cases are being taken to the stage of litigation, there is much more pressure on paralegals to deal with negotiation and settlement outside of courts. Also, it tends to be up to paralegals to deal at other levels relating to ESTA. It is their job, for example, to contact farmers to inform them that if pursued a particular eviction would be illegal. Paralegals tend to be the first port of call, but will refer to NGOs if a client needs legal representation, or if a paralegal needs specific advice. Whilst dealing with ESTA, paralegals will deal with many other legal issues for farm workers, such as domestic violence (as Walter did in the *Vlugte Plaas* case, see introduction). They are considered by one informant as the 'barefoot doctors' of the legal sphere. In the context of the SFP or a law clinic, paralegals are necessary since lawyers do not have time to deal with aspects that are not directly related to the legal case. Paralegals however deal with other problems clients are facing. Paralegals are prevented through interventions of the Cape Law Society from representing farm workers in court, but they represent farm workers in other ways, and these further demonstrate the ambiguity of their multiple and shifting positions (see also Chapter eight). Their attempts to be recognised to represent clients in court were more of an act of gaining recognition of their status and the importance of their work rather than of money or material gains.

All of this aims to address a concern central to the argument of the thesis, that at the local level there operates a divergent set of legal relations that attest the plurality of local legal and quasi-legal forms: the law of the state and the quasi-legal setting of the farm. This fragmentation of law means that in failures of representation, these plural sites are spaces that are opened up for the negotiation of power dynamics.



Paralegals in the rural context of South Africa are more than legal assistants; and their legal expertise, experience, and involvement in farm relations mean that the identities they move between are often contested within the confines of the spaces in which they work; on farms, for example.

In the following section I outline the emergence of the rural paralegal movement in South Africa; a movement, that is, of social activists; one that has a distinct character in that it relates so closely to the political projects of the ANC and of the South African freedom movement yet is important in critiquing the hegemony of state and law makers; and that has played an integral part in the rural land rights movement.

### **'Just people with a bit more understanding of the law': the roots of a rural paralegal activist movement**

The late 1970s and early 1980s were characterized, according to Geoffrey Budlender, by a legal paradox:

On the one hand, a repressive state systematically discriminated against the majority of its citizens, even to the extent of declaring that some of them were not citizens at all. On the other, there was an extensive and active human rights "industry" (foreword in Abel 1995).

The legal paradox that produced this industry also created a rural activist paralegal movement, a part of that industry, and, it could be said, at both the roots and the margins of the growth of the industry. However, not once in Richard Abel's book about law as political tool in resistance to apartheid are paralegals mentioned, even though they were a burgeoning force in the politics of rural resistance. To highlight this paradox further, rural rhetoric was pushed to the margins by the urban political movements that were also however appropriating and adapting rural characterization for their own symbologies. In order to appeal to left wing political consciousness and make an example of the state that these movements were resisting and fighting, they presented the apartheid state as the *boer* (Afrikaaner farmer). *Boere* were symbolic of apartheid, yet rural activism was hidden in comparison to the mass disobedience and demonstrations that characterized urban towns and cities at this time, and does not qualify for attention in historical analyses. Rural areas were seen to be becoming increasingly Afrikaans as blacks were moved out, and the coloured rural proletariat were correctly seen as at once protected and subjugated by farm paternalism or by the protectionist policies of the state (see introduction). If political at all, coloured

people have identified with the politics of the Afrikaners, on whom they relied for protection. Paralegals, on the other hand, represented a shift away from this, as they quietly fought apartheid through knowledge of its laws and they became part of a fragmented coloured resistance to Apartheid. It is therefore important to understand the roots of the paralegal movement in relation to the wider freedom movement. As well as showing how paralegals contributed to this, I also show how they were marginalized by the growing hegemony of the ANC, which has resulted in their ambiguous positions today.

According to the National Community Based Paralegal Organization (NCBPA)<sup>52</sup>, advice offices, from which paralegals work, ‘were a *central* feature of civil and political resistance in South Africa’ (NCBPA website, emphasis added), during the latter years of apartheid rule. I was unable to establish exactly when *all* paralegals started their activities but one of my key informants, known to most people as Oom<sup>53</sup> Saki, has been working as a paralegal since the 1970s; the advice office where he works, the Riviersonderend Advice and Development Centre, he established in 1983. It seemed from interviews with other experienced paralegals, that the emergence of a paralegal movement as such came about in a key era of mass civil disobedience to the apartheid state, the late 1970s and early 1980s. The NCBPA website goes on:

[Advice Offices] played a pivotal part in galvanizing communities and mass disobedience to the apartheid regime, provided legal defense [U.S. spelling in original] and support to families of detainees. Because of their location, they were able to obtain internal and external solidarity, moral and material support for groups under distress due to political repression ([www.ncbpa.org.za](http://www.ncbpa.org.za)).

For many of the older generation of paralegals that I worked with, a career in law began organically out of resistance to the apartheid project while they were officially doing other work or were unemployed. This informal, paralegal position was localized and also reactive to apartheid conditions and laws (political), but as is evident in the quote above, they were already obtaining ‘external solidarity’, which came from sympathetic white lawyers, and ‘moral support’ from rights organizations such as Black Sash.

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<sup>52</sup> Established in 1996, the NCBPA now co-ordinates the training and work of paralegals nationally.

<sup>53</sup> Afrikaans for uncle.

Many paralegals told me that their interest in law grew out of a need to find out about the workings of the law when friends, relatives and neighbors were interrogated and arrested, or when local neighbourhoods were forcibly removed *en masse*, when rural and urban space was being carved up and racially defined. Their identity literally emerges from their community. When they managed to get information from, for example 'more liberal, progressive lawyers' (a comment<sup>54</sup> made by Walter, an experienced paralegal), they would pass this information on as advice to other worried friends, family and neighbours. As such, their reputation grew out of sporadic, sketchy and subjective knowledge of legal matters relating to the hegemony of the apartheid state. Many of this first generation of paralegals and legal activists claim that a movement really began in 1978, with the apartheid government's policy of forced removals. As a human rights violation on a mass scale, 'forced removals were as hard to justify as the holocaust - an analogy Bishop Tutu drew' (Abel 1995: 432). According to my research assistant, paralegal Walter Wessels,

Before that time there weren't really many paralegals. Paralegals were just people with a little bit more understanding of the law than the average person. They would go and visit those progressive lawyers when they needed to know some information on a specific law, or help with a case, and then they would come back to their communities with this information, and more people would come to them for advice. After a while these people established their advice offices out of a growing need from the communities for information and advice. It steamrolled the service organizations [like Black Sash, LHR and the Centre for Rural Legal studies] when they could see how these advice offices were serving their communities,... what they could see happening steamrolled them into offering their help; then they came and offered their assistance. This is how those paralegals started. ... now *they* are practically, to all intents and purposes, lawyers (Walter Wessels, 2003: field notes, March 2003; personal communication).

During those days of the birth of a movement, paralegals had no formal legal training, and as can be seen above, relied on piecemeal information and legal advice where they could get it and when it was required. Indeed, as Walter comments above, around the beginning of the 1980s, legal NGOs, usually set up by liberal whites to oppose the government and to give free legal assistance to mass freedom

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<sup>54</sup> From a conversation with Walter, also my research assistant and interpreter (2002: fieldnotes), who is also cited below.

movement activists and local victims of apartheid state terror, began to recognize that paralegals were indeed working daily with apartheid law at grass roots; they were themselves legal community activists. They in turn began to provide training for paralegals in legal matters. This legacy survives now in the paralegal training projects that those same NGOs provide (as addressed later in this chapter) and ad hoc training sessions provided on the workings of particular laws.

During the birth of this movement, then, paralegals' racial identity was disempowering to them, though nowadays it aligns them with the community in which they serve, through historically shared experiences. In Rooi Dakke, a local informal settlement (or squatter camp) in Grabouw close to the road where Walter lived, one woman told me the story of how she and her family had been forcibly removed from an area of Grabouw called Klipkop, an area that, until that time, had been mixed with poor 'coloureds', whites and black Africans living as neighbours in one area<sup>55</sup>. Walter joined in the discussion, explaining to me how some of the residents had contacted human rights lawyers Channels and Albertyn in Stellenbosch. Because the forced removals in this case had been initiated by a white farm owner, Walter told me that the advice office, having good contacts with this firm of lawyers, couldn't do a lot to help them: 'If a white lawyer spoke to a white farmer they could come to an agreement but a coloured guy, the farmer wouldn't accept' (13<sup>th</sup> February 2003: fieldnotes).

Gradually, advice offices came to operate out of the homes of the paralegals themselves or out of rooms offered to them by local supporters and clients. Their political and legal activities had to be invisible and cost little:

Paralegals drew their resilience from communities' willingness to house some of their activities thereby avoiding detection. As a result most advice offices still retain their location within communities they served then and some of them are still operated by their founder members (NCBPA website).

In some cases that I observed, this kind of arrangement continues today, though for many, funding from international and national development organizations meant that

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<sup>55</sup> The socio-economic position of many poor whites spurred governments in the early twentieth century (prior to apartheid) to symbolically and ritually create 'coloured' as a racial class (see introduction).

advice offices were able to operate out of more formal premises<sup>56</sup>, an arrangement that was often (and continues to be) tenuous and insecure. But even in these more formal premises, what stood out most was a kind of making-do in terms of physical and administrative resources. Though this can be said to be true of some NGOs, these kinds of circumstances were in stark contrast to the town premises of the 'service' NGOs like LHR, and in starker opposition to the slick offices of the private sector lawyers who represented farm owners.

The politico-legal context from which the movement was produced was part, then, of a vast movement resisting, in myriad ways, the apartheid state. Though this movement was by no means homogenous itself, it was symbolically coherent in that as a whole it represented mass defiance to the laws that apartheid administered and that it used to create gulfs between people. However, it was itself divided economically and racially along lines of the imposed racial order. In the rural areas in which I worked, and in the rest of South Africa, the Afrikaans farmer, or *Boer*, was symbolic of the embodiment of apartheid terror, and became an image used in urban demonstrations. Such was the force of this image that it is used to this day and caused political discomfort when demonstrators carried placards bearing 'Kill the Boer, Kill the Farmer' at the funeral of a famous ANC activist. Rural images were thus appropriated in the past for anti-apartheid demonstrations that were followed by violent backlash and further restrictive laws from the apartheid government. The paralegal movement was born out of such emergencies, yet as a rural movement it doubly resisted the state as a set of coercive laws and the state as embodied by these *Boere*. *Boer* became a word used to mean police and apartheid security and law enforcement as well as a general derogatory way of saying white man. But *Boere*, for rural paralegals and their clients, were first and foremost the very real rural agents of apartheid policy. They were at the centre of that to be resisted for these rural community activists. Nowadays their often arbitrary treatment of farm workers is still resisted by paralegals, but paralegals are also attempting to reform the attitudes of farmers, bringing farm workers rights into their lexicon. Farmers can also be seen to be the ones that nowadays resist these statist moves.

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<sup>56</sup> Though some operated by visiting clients when funding ran dry to pay for the office rent at Grabouw advice office.

The paradox that Geoffrey Budlender speaks of is highly relevant here: the ways that paralegals struggled to learn about laws that they abhorred forced an NGO sector into existence not only for the purposes of promoting the advancement of human rights, but also for the new emergent rural paralegal movement. Apartheid not only produced a vibrant human rights *industry*, but also a movement of legal agents resisting the central, localized figures of apartheid domination, the farmers.

### **Rural relations and rural activism: Identification with the rural poor**

The communities in which those paralegals work have changed little since those days; what have changed dramatically are the legal and political contexts in which they work. As the access of the poorest – often black African communities - to basic needs such as education, housing and public health started to be prioritized, paralegals became more important (Jensen, 2004). In his article, Jensen describes how there is less financial flow now that coloured townships<sup>57</sup> [or, indeed, farms] are no longer protected by the state. Prior to the political collapse of the apartheid system, rights to such needs were based upon racial classification, subject to an increasingly complex set of laws that were revised and adjusted by the National Party from 1948 until the 1980s. The situation faced now by community workers (including local ward councilors) was one of needing to intervene and challenge the current state of affairs in which their communities are being deprived of access to state resources. Paralegals have done this by appropriating the rights talk central to the new state's premise, and using existing legal resources to challenge socio-economic problems in their communities; paradoxically, however, community workers have 'had to rely on the state more than ever' (Jensen, 2004: 194). What continues today is marginalization of certain 'communities' vis-à-vis state services. Paralegals' social activism and their legal work are therefore mutually inclusive as they address themselves to the socio-economic problems in their own communities that are continual reminders of the legacy of apartheid and the continuation of paternalism through law. There is nowadays a complex set of social relations to which these reminders are at once relational and legal to paralegals; part of their own adoption of a legalistic view of problems such as eviction usually enables them to

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<sup>57</sup> Jensen undertook anthropological research in the Cape Flats townships of Cape Town from 2002-03 on gangs and gang violence.

operate outside of these paternalistic relationships – though it is not always so easy. They not only relate to farm workers, but to farmers, municipality members (sometimes neighbours or old friends), bodies of the (welfare) state, lawyers, locally based magistrates, a wide variety of agents, in relation to whom paralegals occupy multiple positions. Such positions might be that of old friend, or drinking buddy,<sup>58</sup> with a farmer with whom he or she has been in past quarrels; suffice to say, these relations had a history all of their own.

If one talks to older paralegals who have been mentors to their younger counterparts, it is the contexts in which they work, the poverty of their own communities, that they aim now to address through law and through rights, and this results from a close identification and empathy with clients. In a keynote address given by the MP Ms Cheryl Gilwald at the graduation ceremony of a paralegal accreditation course at Stellenbosch University, it was clear that the future importance of paralegals was in the promise of their remaining in poor communities and continuing to work there on issues connected to socio-economic rights and equality. By contrast, when Kamal Makan, representing the Security of Farm Workers Project (SFP), gave a speech to LLB graduates, in which he attempted to convince these young attorneys that pro bono, or free, legal work was of moral value, and could also be considered a useful, not to mention possibly soon to be a compulsory, component of Candidate Attorneys' articles, the students seemed bored. I later saw a law student I knew, who told me he thought most of the students there would not be interested in pro bono work, though he himself had enjoyed hearing about the work being done at LHR (March 2002, fieldnotes). This illuminates a stark contrast between graduating Law students and paralegals, particularly in terms of their frames of reference. However, identification with a part of a population has implications for who will be paralegals in the future. Certainly for rural paralegals, future paralegals will probably be of the same culture, race and class as the clients; that is, in the rural areas of the Western Cape, they will be Afrikaans speaking coloured people.

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<sup>58</sup> Walter told me that he had sometimes been out and drank with a local, White magistrate, and discussed with me the kind of man he was, and how he had adjudicated on ESTA cases (Mar 2003, fieldnotes).

Their economic roots are an important part of this story. The economic positions of rural advice offices are often tenuous, in some cases as insecure as the positions of their clients. Although many paralegals rely on external funding, advice offices' existence, as was shown earlier, is sometimes reliant on aid from rural communities in which they work. The existence of advice offices and the possibility of financial remuneration for paralegal work depends more nowadays on international funding bodies which have required that over time this funding be incrementally withdrawn with the promise that the state subsumes rural advice offices into its expansion of legal aid.<sup>59</sup> For many paralegals who have resisted coercion from state hegemony, this kind of co-option is anathema to their claims to legitimacy through their identity with the community (as opposed to the state), or their independence from the state. Like the community workers described by Jensen, paralegals could be said to be facing some kind of crisis in legitimacy. As much as they needed state assistance 'at the same time,

[community workers] needed to construct the state as insensitive and uncaring, thereby opening a space from where they could mediate between the ignorant community and the insensitive state... Their greatest leverage in negotiating and contesting in the field is to claim to represent, even embody, the community not least because the state has pledged itself to partnership (Jensen, 2004: 194).

There is a similar contestation going on among rural paralegals. It exists at several levels: with the state and its laws; with the judicial system and its component parts (for instance, local magistrates; or in the battle for paralegals to gain other representation rights); and with farmers.

A paralegal I visited on several occasions in her home near the West coast still worked in a small room in her house with little more than a small desk and a telephone, as she proudly told me, just as she had always done. Many of her clients were poor, often seasonal or contract farm labourers or unemployed – on one occasion when I visited her house one of her clients was helping in her garden; she said she had employed him because she knew how much he needed work and

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<sup>59</sup> Pigou, Piers 24 November 2000 'Putting its money where its mouth is', Mail & Guardian web archive, <http://archive.mg.co.za/nxt/gateway.dll/Printedition/MGP2000/31v00284/41v00285/51...>



income.<sup>60</sup> Though the employment of a gardener is nothing out of the ordinary in upper, middle and lower-middle class homes, in South Africa, this amounted to a reciprocal exchange of services.

Often paralegals do not get paid at all for their advice, except where cases result in legal compensation, and even then it is usually free of charge. According to another informant, 'clients pay me a small percentage of their compensation in cases where they win compensation, often via the CCMA<sup>61</sup> from the employer. That is how I earn a wage – otherwise I have no wage, just enough funding from the union to pay the rent for the office'.<sup>62</sup> If at its origins it was a voluntary service to aid others as and when, it is much more uniform in its scope now (though much work is still ad hoc) but paralegals are often still very much volunteers. Others still earn a wage by working full or part time in justice centres, which, until recently, were funded and supported by NGOs and international justice and development organizations, but jobs in these centres are few and the current developmental need for paralegals is in the more rural advice offices that do not always have enough funding to pay rent, never mind wages. This requires a kind of commitment to legal work that transcends economic aspirations and means that paralegals often suffer hardship for their work. This presents a paradox – those hired to represent people in labour disputes, say, over minimum wages, do not necessarily earn a living wage themselves. However, the independence of most paralegals from both mainstream law and the state means that many paralegals often do not mind living from insecure international funding rather than working within the state legal apparatus. What this means for the future of paralegalism as a politically active movement is unclear. The liminal characteristics of paralegalism, though promising uncertainty for now and the near future, ensure a degree of autonomy and independence which, some paralegals would argue, the client often seeks, and is important for their continued resistance to the way current development creates further hardship for the landless rural poor (see Greenberg 2004). The system of accredited training that has recently been rolled out is certainly

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<sup>60</sup> April 2003: Fieldnotes; personal interview with Erica Lestrade, paralegal at the Piketburg Rural Advice Office.

<sup>61</sup> Commission for Conciliation, Mediation and Arbitration

<sup>62</sup> January 2003: Fieldnotes; personal interview with Raymond Barties, paralegal at the Grabouw Rural Advice office.

making this sector more uniform, so it is fair to say that those still not earning living wages as paralegals are themselves marginal to a standardizing sector.

The similarities of rural paralegals to ‘barefoot doctors’, mentioned earlier in this chapter, are pertinent when observing paralegals doing their work. While I was being given a tour of one of the informal settlements in Grabouw (that I had not been working in) by a local ward counselor, I encountered a paralegal doing his rounds. We had spent the afternoon walking around the (mainly African) squatter camp, and when we left via the southern end that leads into Pineview, a large, predominantly ‘coloured’ area that was partly a former coloured township and partly part of the RDP housing settlement, we bumped into Raymond who was visiting clients in the area. He told me that he was rushing to see someone here whose electricity (provided by the municipality) had been cut off and that then he was visiting another household in the area who had been threatened with eviction by the municipality because they could not afford to pay rent. When I suggested that we meet up and talk again about his work, he said, enthusiastically ‘oh yes, there are so many evictions here in Grabouw – these farmers in this area, they are just evicting and taking the law in their hands. And also I must tell you about this pension fraud case that is coming’ (June 2003: fieldnotes). Some days later on visiting Raymond in his office we found that it was closed. The next time I saw him he was again doing rounds in a car borrowed from a friend whilst Walter and I were visiting some informants in the Pineview area: he told us that the union that funded his advice office had disbanded under a new clause in the union law (the union had discovered that it was existing illegally as an unregistered organization), and therefore there was no money coming in at all. But he insisted that his paralegal work had to continue so he was visiting clients in their homes. ‘This is my office for now’, he said, indicating his friend’s car (June 2003: Field notes).

Experiential identification with clients also informs the passion which continually motivates paralegals in their work to improve people’s lives through access to justice. This identification is not only economic, but is more directly relational, as with Isak Palmer (Oom Saki), himself a former farm worker, and for Walter, whose mother had been physically abused by her farmer employer in the past. Other experiences also inform paralegals’ motivations; one young paralegal told me how,

following her, her mother's and her sisters flight from domestic violence, and the subsequent divorce, she was always interested in the law. She saw law as an escape from oppressive circumstances, as she had directly experienced them herself.

### **Paralegals, ESTA and farm paternalism**

The majority of cases that paralegals deal with are civil at their core; in other words, they are employment disputes and, particularly for those paralegals working in rural advice offices, were ESTA (eviction) cases.<sup>63</sup> They also deal with divorce, the Child Maintenance Act<sup>64</sup>, domestic violence, and even increasingly with consumer rights<sup>65</sup>. In such civil cases, a degree of trust is needed, and this is the kind of trust that can emanate from the long-standing position that the paralegal has held as fighting through adversity for the rights of the community – in those politically fraught issues of civil liberty and rights. It also stems from the way in which paralegals and their clients often relate to each other through shared experience of an 'economic-racial class', and relational characteristics of their former experiences, as outlined above. Though farm dwellers can linguistically relate to paralegals, however, they may not know how much they have in common with some paralegals, and the access to law that paralegals can provide for them can be overridden by the reliance on paternalistic forms of dealing with grievances.

Paralegals' attempts to free farm workers from paternalism through legal means have been met with resistance and only recently are their demands that farm workers have rights to visitors being addressed, though this right, amongst others, has been in place in law since the mid-1990s. Walter told me

How many times have these *boere* set their dogs or heavies onto me and I've had to run to get away from them? Even with the law on my side, it has been dangerous work. I have even been threatened with guns, just for explaining that farm dwellers have the right to have visitors on their farms, not even getting as far as dealing with the matter I was there to talk to him about (February 2003, field notes).

Further, if they have personal experiences of life on farms, they see how farmers translate paternalism into a form of legal pluralism, and resist this. Farmers have

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<sup>63</sup> April 2003: Interview with Saania Larney, NCBPA.

<sup>64</sup> Training with rural paralegals on Human Rights Day 2002 (fieldnotes, March 18<sup>th</sup> 2002); discussion with Raymondt at Grabouw advice office (January 16<sup>th</sup> 2003).

<sup>65</sup> Interview with Isak Palmer at Riviersonderend advice office, February 23<sup>rd</sup> 2003.

argued that private farm 'law', their authority, overrides national law. Though some farmers still feel this way, they legally challenge ESTA with the assistance of their own lawyers, and they also draw on the language of rights in these challenges, particularly property rights. As far as paralegals are concerned, the people for whom they provide the service are as poor as ever, and there are loopholes whereby the law can be circumnavigated by local farmers, with their access to lawyers and a local judiciary sympathetic to farm owners. This, for the paralegals, is still a hot political issue further underlining long held paternalistic power of farmers, race and class.

Many paralegals make it part of their advice office mandates to provide training in human rights and the constitution to, in particular, farm workers and dwellers, making 'rights talk' (Wilson 2001) a real rhetoric that farm workers can normalize into work related issues and, particularly, disputes and their resolution, rather than relying solely on paralegals when it is often too late. Such education is not formal or universal, and is sometimes even dependent on the willingness of the farm owner to allow it. But suffice to say, paralegals saw their positions as community activists as ideal for negotiating such transformations, and saw it as their role to work on literacy and other programmes that would enable the poorest and least educated to be able to provide for themselves, and, at the very least, be able to understand the law in relation to their lives and problems.<sup>66</sup>

Legal literacy and providing access to justice for the poorest is little different an aspiration to those paralegals held in the 1970s. The major difference now is that their position of resistance to the state has changed to one of being drawn into the state's developmental programmes; to which, in assessment of the neo-liberal roots of legislation and the loopholes in law, paralegals are simultaneously resistant. Issues such as unlawful detention may be less relevant in these communities than they were under apartheid, but housing for farm dwellers has become a human rights issue that is at the centre of much of the work that paralegals do and this is certainly a continuation of the past for them.

Of course, issues that individual paralegals face vary, and are contingent on clients' particular concerns. Evictions in farming communities, for example, are embedded

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<sup>66</sup> Isak Palmer, March 2003: Fieldnotes: personal interview.

with other matters associated therein that are often dealt with after the fact, such as pension and labour disputes. This makes dealing with these matters difficult for paralegals. Their identification with farm workers means that they can be seen as rabble rousers from farm owners' points of view, as they attempt to resist the foundations of farm sociality with law. This position is viewed as dangerous by paralegals and their ability to overcome the danger adds to their status and trustworthiness.

Within the neo-paternalistic culture of farms (Du Toit 1992), 'access to justice' has become the focal point of paralegals' activism because it was seen that those people who live on farms do not take legal action or seek advice themselves, but are apt to go along passively with, or be persuaded by, the wishes of the farmer, as they did in the past, due to the nature of the legacy of paternalism on farms. As was evident in the example of Nikki discussed in the introduction, even where help is sought from the paralegal, sometimes the nature of the farm dweller's longstanding past relations with the owner of the farm may make him reluctant to put a complaint into more formal legal or criminal procedure. Although the farmer may no longer be looking after the best interests of the dweller, the dweller may take an attitude of 'better the devil you know' or prefer not to be seen to be causing upset and trouble within the intricate politics of farm paternalism. Additionally, law is imposing, powerful (especially when wielded by the farmer against the dweller) and incomprehensible to illiterate farm dwellers. With the farmer still symbolic of the violations and inequities of the past yet with potential to protect (like the state?), and with farm evictions going on at a furious rate, more and more farm dwellers find themselves homeless and seeking redress from advice offices when it is too late,<sup>67</sup> because when one has already left the house, ESTA (as discussed in the introduction) no longer offers much protection.

The boundaries between politico-civil activism and legal representation, for paralegals (and for NGOs) seem necessarily to be blurred, and since it is with civil cases and advice on civil matters that rural advice offices predominantly deal with, the politics of defining rural acts of injustice as 'criminal' often causes a bone of

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<sup>67</sup> Raymond Barties, February 2003: Fieldnotes; personal interview.

contention between local paralegals, farm owners and local police stations. Even farm dwellers might prefer to recognize the relational value of harm rather than the legalistic value of an action. Farm dwellers are only slowly beginning to trust paralegals, as they realize that paternalistic protection may be becoming a thing of the past (a situation that they find frightening). But this is not a simple movement from paternalism to legal optimism. Paralegals still encounter farm dwellers who accept help at certain points and resist it at others, depending on how they feel they can themselves deal with the problem through the paternalistic discourse, if they have maintained a relationship of sorts with farmers. Paralegals still occupy tenuous and ambiguous identities, then, as the proof of their efficacy is dependent on the degree of success with which each problem is dealt.

The actions that paralegals take in these kinds of cases have multiple implications. First, and as with Nikki Du Vries, they must translate the emotional and relational content of complaints into legalistic terms – the problem becomes ‘legally re-oriented’ (Conley and O’Barr, 1990) into the language of not only law, but the injustice of a human rights violation. Second, through this translation, the paralegal is attempting to re-educate: in this case, the farmer, the farm dweller, the other residents on the farm, and the police; to think in new ways, to think in the language of law and to translate subjective emotional experience *themselves* into legalistic terminology. It is also an attempt for these other agencies to recognize farm workers as legal citizens of the new South Africa, rather than as dependent on farmers. If transforming a farm dweller into a full legal agent is part of the work of the paralegal, then at every step the discourse of paternalism is challenging the endeavour and even subsumes it as farm workers are not easily convinced by a rhetoric outside the familiar and rule based social order of the farm.

### ***Paralegal privilege: working within the community***

Occasionally, paralegals are presented with criminal cases, even though the bulk of their work is civil, and one could argue that the kind of legal privilege of a paralegal is not very much different from that of lawyer. Indeed, Walter was quoted above as saying that to all intents and purposes, paralegals are lawyers. However, they are not, particularly as they have not been allowed to represent clients in court. But, this

position as similar to a lawyer (but not actually able to act as one), offers the ambivalence upon which paralegals sometimes rely in order to maintain trust in their localities. Paralegals working in the communities where they live must be very discreet to maintain the trust and credibility which keeps them in communities' high regard. Over the months that I observed Walter giving informal legal advice (for he was a highly trained and experienced paralegal but not practicing officially at the time of research) I noted a very deep level of discretion about people's private matters when they sought advice from him at home. The legal privilege of a paralegal is similar to that of a lawyer, but it is imposed on a paralegal in a radically different manner. By living among the people who they serve, paralegals in rural areas are subject to the scrutiny of those communities, and are also harbours for potential local gossip which could de-legitimize their trusted positions. Walter, for example, spoke of his paralegal and neighborly relations in the local community thus,

When I am not working, I keep myself to myself. I don't like to gossip with these people [speaking of the neighbours on our street]. If people want to come and see me in my house, and if they want to come and ask me something or just to talk, that is fine, but otherwise I just mind my own business. I don't want to have anything to do with the gossip (fieldnotes, May 2003).

Subject to self-scrutiny and the check of the potential local gossip machine, paralegals evidently hold this special privilege in high regard, even though it is not necessarily imposed on them by stricter, legally binding means. Even though there was an advice office in Grabouw, former clients, friends, neighbours and relatives often used to seek Walter's advice at his home. These people were not overtly shunning the services of the advice office run by Raymond, but were taking advantage of a free source of advice that went with friendship. As such, he and they operated a similar arrangement to that which was in existence when he had started out as a paralegal in the early 1980s. Walter claimed to know by person at least 70% of the town's population and claimed, 'probably more people know who I am, probably more like 90% of the people'.

The paralegal referred to in chapter one, who advised his neighbour on how to avoid being charged with dangerous driving and leaving the scene of an accident, was in a

privileged and discretionary position but maintained in this story that this was because he really had nothing to do with the case in a formal manner. He was also emphatic that this was the main difference between his own position in relation to client information, and that of a litigation lawyer. His legal expertise and knowledge was evident in his discussion of this matter when in the middle of this description he began to explain the difference between reasonable doubt and probable cause. Though his decision to advise this man may have been ethically dubious, he was mainly concerned about the welfare of this man's family. The instrumentality and flexibility of such a position is key here to the trust between he and his neighbour – and this paralegal had made a judgment that had actually shaped the outcome of the case. That the paralegal is not subject to the same rigorous codes of ethics as the lawyer, as this informant told me, could be used instrumentally in order to really help a client. An important difference was that he would have to see this man and his family in his own community; the personal aspect of this case actually blurs the distinction between relationality and legal formalism discussed above.

In the above example, what kind of boundaries are being operated by a respected paralegal and community activist, who told me that he occasionally has a beer with the local magistrate and who has worked as a paralegal for many years, in promoting access to justice to the poorest people in his community? This case, to me, exemplifies just one of the points at which paralegals' legal agency lacks specific fixed and determinate boundaries. It demonstrates, on the one hand, the flexibility of paralegals who deal with civil cases and the active promotion of human rights in their contemporary discursive forms, and on the other how they are also hedged by pressures of a clientele that includes friends, family and neighbours. To clients and the community in which they work paralegals are 'critical cultural agents' (Nash 1989: 53) who can be confided in, 'who filter and interpret the law' (op cit.) and who will give the best advice in accordance with the client's self-perceived needs, but who makes a moral judgement about a case according to the need of that client. The position of paralegals working right at the heart of their own local communities means that the paralegal has again to shift across margins of legality to more relational ties of local kinship and then back to legality. With the range of issues, the varying social strata and oppositions within which they must negotiate on a daily



basis, the boundaries are necessarily unfixed, shifting and constantly subject to negotiation, as paralegals might be said to occupy ‘many judiciary worlds simultaneously’ (Coombe 1998:). But it is those boundaries that are shifting continuously, particularly in the ambiguous world of local rural politics, which make paralegals simultaneously resist *and* support power structures (Yngvesson 1994; Abu Lughod 1994; Foucault 1982). Susan Bibler Coutin’s of description economic migrants as operating perpetually in a ‘*contested state of being*’ (1994: 283 emphasis in original), might also be applied to paralegals who are agents of transformation but smoothly move in and out of different moral agendas and roles.

### **‘Critical cultural agents’**

In my many discussions of farm relations with paralegals, despite apparent indignation that the political landscape is very slow to change, most of the paralegals that I worked with also used to assert that they were optimistic about relations on farms: that with the education of legal rights to all parties, relations on farms can *and* do improve. During a farewell telephone conversation before I left South Africa for good, my friend Ingrid, a paralegal working in rural development and studying part time at university for an LLB, excitedly told me the following story:

I was driving to Malmesbury when I saw a big group of farm workers walking down the road, also in that direction. I slowed down and I saw that these farm workers looked really upset, you know. So I stopped and I asked what the problem was. They told me that they were going to Malmesbury to find someone to help them and to find work, because they had had enough with the farmer and what he was like to them. They told me all the details of their dispute with the farmer and at the end of the story I asked them to go back to their farm and to meet me at the office of the manager. Two of the workers came with me in my car and I quickly phoned the farm manager, told him that I worked at the Goedgedacht trust and I asked if I could arrange an urgent meeting with him and the owner of the farm. I didn’t tell him what it was about.

We went to the office and some of the farm workers that had come in the car came in with me. I told the farm manager and the farmer that these farm workers had told me their side of the dispute and that I now wanted to hear their own side of it, and that maybe I could help them sort it out. Anyway... that man, the farmer, wow, he was really angry and started shouting at the farm workers in Afrikaans and then everybody there was shouting. So I was very calm, you know, and I said to the boss, ‘No, I want you to tell *me* what this problem is; just for now I don’t want you to speak to each other at all’. I was so scared, I can tell you, this man was

frightening, and you know me, but I stayed quiet and waited and then repeated again that everybody must give the other side a chance to speak and stay quiet whilst they were doing and that I was here to help, but only if they did this like that. Anyway, Pauline, without having to leave the farm, that day the farm workers got their jobs back and they actually were all laughing together at the end of it! When I left the farmer took the phone number of the trust, just like that!

As a young coloured woman in her early twenties, she had felt scared at first by what she was doing, but by using the language of rights in their negotiations and interventions, she was drawing, like other paralegals, upon a powerful hegemonic rhetoric of nation building. Ingrid, because of her own class and colour in relation to those of the farmer, was afraid of him, but stood her ground as she felt she was in a strong position as a go-between with full knowledge of the law. She was also imparting this knowledge to both the farmer and farm workers, and sees her intervention as key to the farmer and workers 'laughing and joking together' at the end.

In a paper examining the movement of international legal ideas, Mark Goodale discusses the agency of a local lawyer as a 'moral philosopher' (2002: 60). In the ethnography of a hamlet in rural Bolivia, Goodale follows the work of a particular legal agent, the director of a local womens' NGO and lawyer whose central projects are transferring notions of rights to married couples in order to prevent domestic violence and abuse that, until then, had characterized a majority of unions. The legal intellectual, uses a secular solution to a moral problem, yet evangelizes it 'like a new religion' (ibid: 61). As well as being social activists like Goodale's Alonso De Ibanez, local paralegals were also 'serving as lightening rods for the movement of legal ideas' (ibid: 65). The secular purveyor of moral values of a national project and the internal resistance to the hegemonic apparatus that laws and legal settings embody, paralegals indeed occupy unique and ambivalent positions in rural political landscape.

For the rural people that they represent, new ways of interacting are in fact being translated and then negotiated. For example, where Ingrid mediated in the farm dispute outlined above, no one was more astonished than she was when the two antagonistic parties began to calmly discuss the problems and come to a solution. As she commented 'it was only *me*, between this big angry Boer and all of these farm

workers who were so angry and upset that they didn't want to even see the farmer any more. I was so surprised that I could do this!'

### **Resisting hegemony from the boundaries: betwixt and between**

From the historical roots of rural paralegalism in South Africa to the current new waves of training, new modes of negotiation and unofficial arbitration particularly in the sphere of farm relations, traces a distinct history and activism that borrows from global movements of local ideas and simultaneously from a highly localized resistance to various forms of hegemonic activity, that lies at the roots of more general resistance to apartheid in the past. In a continued position of critical resistance to local, legal and state hegemonies, paralegals are indeed in a unique position as they are always re-negotiating and remolding multiple positions. Their occasional 'duplicity' (cf. Jean-Klein 2001; 2000) makes their work *so* ambivalent politically that in many ways paralegals resist being standardized. Their marginality to mainstream law and mainstream legal activity means that they practice the activity of re-negotiation at multiple realms of the margins – in this way, they constantly shift where the margins change the focus of what a paralegal *does*, from one negotiation or awareness raising activity to the next. With the apparent certainty of the letter of the law (see FitzPatrick 1992) and the moral authority of the language of rights, paralegals move between such conceptual positions in order to effectively represent others without going to court. In other contexts they lobby on behalf of people who have been effectively marginalized from the realization of rights and from mainstream politics due to their historical ambiguous racial positions and their positions in the labour market.

Most of my paralegal informants described themselves first and foremost as community activists. Such a description highlights tensions between the style of resistance of the anti-apartheid movement with which paralegals identified and current ANC policy. It also draws attention to present day realities, that much activism within the law is highly bureaucratic and diversified yet marginal, formalized and yet resistant to governmental hegemonising strategies.

Moving between legal networks and rural labour (whether organized or not); unions and activist NGOs; government departments and agencies (such as the Centre for

Conciliation, Mediation and Arbitration (CCMA), bureaucratic court processes and dynamic and diverse areas of the law (from divorce to consumer rights to pension frauds and the more usual eviction cases), the constant challenge of boundary negotiation characterizes this profession as highly contingent, ad hoc and ambiguous. Where on one farm a paralegal is negotiating between the farmer and the dweller a settlement that will guarantee at least some kind of housing security, the next day she may be approaching the media or the Scorpions<sup>68</sup> to uncover a case of fraud and on the same day may be dealing with more mundane child maintenance proceedings, or contacting social workers. Politically, such people represent a kind of 'old school' resistance that only resonates well with the ANC's more left leaning past. A paralegal may still vote ANC, but will simultaneously be the most critical of adherents. By drawing on Jensen's argument, I have shown that paralegals have appropriated a specific purposive space from which they negotiate and contest the hegemony of a state of which they simultaneously have need. In some ways they resemble farm workers, who must also negotiate with a hegemonic force on whom they rely. That paralegals are acting like farm workers in this respect, then, further identifies them with their moral community (Jensen, 2004: 196-7). Resistance from the margins, it seems, is a complex way of buying into some hegemonies over others, including that of farm paternalism at times.

As I have demonstrated and argued, paralegals critique and appropriate post-apartheid governments' hegemonic strategies of standardization of the legal work of paralegals. This holds a key paradox which lies in their history of resistance and their more current resistance strategies. The history of paralegals as a group - their resistance to apartheid - was part of other local and national resisting practices. Their campaign to become legal agents with more rights to appearance and legal powers, on the other hand, aimed to include them into the state's legal order. But their continuing desire to carry on being politically active on behalf of the rural communities where they live and work at once harks back to those politically active times, and yet might be compromised should they have wider legal powers. Issues of representation are therefore continually in varying states of flux.

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<sup>68</sup> The South African fraud squad.

Whilst dealing on a daily basis with local conflict, and embodying this distance between certain groups of people, paralegals simultaneously resist and criticize government hegemony through their work with and around the margins of South African law. To some extent, I argue, their positions are, as it were, 'betwixt and between': They can be seen, within this area of between-ness, as oscillating between legal roles, loose forms of labour organization, and political viewpoints according to the nature of the work in front of them. This reflects not only their positions vis-à-vis the law, but also relates to the way that they have been marginalized by a state that they formerly supported as a social movement. It is they themselves that now occupy that activist position which the state must support in order to continue being legitimately democratic, but from which paralegals must remain independent. This complex tension is important. It represents a sea change that is indicative of many grass roots anti-apartheid activists' relations with ANC-led government. It is also a profound change in that there is another group of people resisting government ideology: namely, white farmers, who were formerly at the heart of and are still metonymical of apartheid.

If paralegals are betwixt and between, however, to what position will they graduate? Perhaps through continuous 'practice' of their multiple tasks (Bourdieu, 1977) and resistance to the boundaries that the concept of liminality creates, the cultural agency and political currency of the paralegal will change. Some of these changes and their counterparts, examined in this chapter, resonate with wider societal change in a country's apparent transition from apartheid to democracy, and the multiple legal forms this displays. Paralegals operate on the boundaries of a legal pluralism shaped by contemporary and historical narratives of rights, as well as those of paternalism and apartheid state law. The rhetoric of transition and the question of where to define boundaries created, in essence, out of the liminal stage, is currently a contentious issue at the centre of South African debates about what comes after a transitional period in a country's politico-historical narrative. It is a question that has put the current academic field of history into a state of confusion, if not crisis (see Harries, 2004). Some interesting analogies can here be drawn between a rural movement and the state of a nation, when the question of how the nation can remove itself from its

apartheid past is still tricky, despite a critical attempt at nation building that was itself definitive of the transition era in South Africa (Wilson 2001).

I find the concept of marginality additionally helpful, then, in conceptualizing how closely nationbuilding relates to legal and rural activism spheres, and where paralegals fit into the new lines that have been drawn. I have shown the shady grey areas of law in practice – these murky waters inhabited by rural paralegals, as they are caught in this flux, the tension between the old and the new. Just as to show how the history of paralegals sheds light on current practices in relation to the politico-legal landscape; also the position of the paralegal in relation to all of the other politico-legal actors in this movement, shows how the rural civil society movement overall simultaneously critiques, represents, and resists, state hegemony (Wilson 2001).

Olivia Harris argues that anthropologists typically choose to study people who have an ambivalent position in relation to the law, who are on the margins or outside of mainstream law:

At a time of immense expansion of anthropological research, and the opening up of new fields and topics, I suggest that it is still true that the epicenter of the discipline remains with the social groups who are defined as marginal by the mainstream society – peasants, squatters, nomads, mafia, the informal sector, migrants. ... How indeed is marginality to be defined if not in relation to the law? (Harris, 1996: 4).

An extremely important rhetorical reason for seeing the paralegal as a kind of ambivalent and liminal figure in relation to the law and politico-legal activism relates to their own ‘marginal’ position to the law.

The work and training of the paralegal has an ambivalence that reminds one of some of the qualities of the initiate, in the work of anthropologists of ritual (see Van Gennep 1908; Turner 1967). But many paralegals are constantly in this phase; rather than being in an impermanent symbolic state, rural paralegals *have* ambivalent identity. Paralegals are further ‘agents’ of liminality, if one applies this to the transition to democracy. They are translating the core moral values of the nation. Writing on the South African Truth and Reconciliation Commission, Richard Ashby Wilson draws on the anthropological trope of liminality in his analysis:

During the period of liminality, the core moral values of society would be restated and internalized (it was hoped) by those participating in the process. Importantly, the ritualized and moral features of the rituals of transition [according to Turner] were the result of the failure of secular mechanisms (such as the law) to deal with conflict in society' (2001: 19)

I find the concept, and its associations with ambiguity and ambivalence, a useful analytical device to help to explain the position that the paralegal occupies in relation to the government, civil society and activism, mainstream law, and farm dwellers and workers.

As has been argued in this chapter, paralegals were conduits of legal and political ideas and also representatives. They were particularly vocal in the Human Rights Commission Hearing described in the next chapter, which shows how an inquiry into rights of farm communities reproduces power dynamics as well as the 'hidden' element of the state in relation to human rights in farming communities. Paralegals had an important part to play within an overall performance of plural legal forms, liminal itself in nature, particularly because they moved easily into the narrative type that the Commission encouraged. Chapter 8 further compares and contrasts the analysis of the role and style of this commission's hearing, with that of the South African Truth and Reconciliation Commission, as it has been discussed by other anthropologists (Ross 2002; Buur 2001; Wilson, 2001).

## **Chapter Eight - Investigating Human Rights in Rural communities: Commissioning the Present**

This chapter focuses on the Human Rights Commission's (HRC) 'inquiry into human rights violations in rural communities' (SAHRC 2003). It looks at forms of representation of farm workers by paralegals and shows how paralegals were integral to providing the kinds of information that the Commission sought, due to the fact that in their general work they must, unlike lawyers, mediate relational views, legal views and more general perlocutionary assertions. The implicated role of the state is also addressed, and the (quasi) legal analysis of power. The processes of information sharing and representation that the inquiry employed serve to make all parties accountable; both in future law making and in current practice. Where do the people at the centre of the enquiry, the farming 'communities' in question, fit into the overall configuration that has been drawn by the wider civil society? This question concerns the inquiry's detractors, who have traditionally managed relations on farms in the private sphere of (neo)paternalism (Du Toit 1998; Ewert and Hamman 1996; Meer 1997; and Orton 2001); and farm workers, who at the hearing sat in the audience rather than testifying, and whose experiences of rights or their inverse in farm communities were at the centre of the inquiry.

The ways in which negotiations are made in farming communities nowadays were made public and translated into the currency of rights by the SAHRC when it embarked on this ambitious inquiry. It opened up a public arena in which the gaze could be turned onto what seem to be, in the new social order, remnants of the past, marginalized 'others'.

The chapter concludes by analyzing how the inquiry was reported and disseminated, the issues it recognized, and what its impact might be. It finds that there is an internal analysis of power, and that the report feeds back into rural activism, from where much of the most useful information came. This analysis of power has been written about and criticised by academic and activist commentators, and this analysis was also made to me by local commentators and activists; farmers, however, distance themselves from any findings by criticising the inquiry and its methods. They do so performatively, and by doing so they perform their own sense of authority.



Symbolically, I compare the Commission inquiry and hearing to the public inquiry and hearings of the TRC (Boraine 1997). And here lies the crux of the argument presented in this chapter: Each performative element in the hearing replicates symbolically the kinds of relations and their dynamics on farms; through a dramatic performance of these relations, the HRC displays the balance of power in farming communities, and does so in a way that ‘others’ it from transitional nation-state making, which, as a Chapter 9 institution<sup>69</sup>, it is mandated to do. Paralegals and local activists are also doing this, but the performances described below also show that legal reform and new rights are not having the desired impact in rural ‘communities’, they merely draw new lines in the balance of power.

On Human Rights Day 2002, a public holiday celebrated by civil society organizations and government, the year was dedicated to farm workers’ human rights, coinciding with the SAHRC inquiry into human rights in farming communities that had been launched the year before. Between July and November of the same year, the SAHRC held public hearings for the inquiry in every province of South Africa. I attended the Western Cape provincial hearing and the ethnography that I use here is from my field notes and also my analysis of the ensuing report that was published on the internet (SAHRC 2003). I use ethnography of this quasi-legal public event and the report to show how legality is being restructured in South Africa, and how it is still central to an ongoing project of nation building that was begun by the writing of the Constitution and with the Truth and Reconciliation Commission (SATRC).

To what extent is the SAHRC implicated in this nation building project for which the SATRC attempted to forge the foundations? I suggest that the SAHRC, by its constitutional mandate, uses a TRC style of inquiry to legitimize the ongoing need for these sorts of inquiries. Therefore, pursuing a general commission inquiry (rather than individual cases of human rights violations or court cases) reiterates publicly a national need for this body and for such public quasi-legal displays that relate specifically to the pursuance of a human rights culture and a more uniform legal

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<sup>69</sup> Several institutions that includes the HRC are so-called, because the mandate for their existence is a requirement of Chapter 9 of the South African Constitution.

identity. Further, the failure of new laws (and of justice) has required that the Commission has a different role from State law in investigating current human rights violations. The HRC draws on certain symbolic *modi operandi* of the TRC in order to raise awareness of the issue of rights violations among the urban public by making hearings central and public, in the scrutiny of media and therefore accountable (Braude 1999). Individualistic human rights become one collective, public and civil issue; law is used as a tool to draw civil society around issues of rights abuses; issues of state *governmentality* still pertain (Hansen and Stepputat 2001: 8-9) but whilst the responsibility of the state for socio-economic problems of farmworkers is argued in the document produced, it is the unequal power relations that are given most blame for a situation, and again the government is criticised for not being *visible* in dealing with it.

Finally, issues drawn out of this inquiry are the same as those that can be drawn out of the ethnography that makes up the first part of this thesis. I have not, however, deliberately set out to replicate the issues discussed in this thesis from the inquiry's findings; the connection is in the way paternalism is implicit in the themes that emerged from the legal realm, but made explicit by academics. I explicate these issues and show how paternalism is made visible by the enquiry without direct mention of the discourse. As in chapter 5, where I showed that a discourse of marginalization has emerged among local rural activists, and in chapter 6, where I argued that such rural activists occupy the margins they represent, here I argue that the public performative element of the inquiry is an attempt to move farm workers away from the margins, but as representations are made in the same way as they are in everyday reality, it performs the general situation rather than altering it. The two performative outcomes of this inquiry (the public hearing and the document), respectively dramatize paternalist relations, obscuring the state yet explicitly providing a role for law; whilst the latter advocates a future and enduring role of the state and law in rural relations to redress power imbalances.

## **The Western Cape provincial hearing, 3-4 July 2002**

When I arrived at the hearing it was just about to start, and feeling self-conscious that I might be a little late, I spoke to a woman stewarding in the entrance hall who told me that it had been late getting started. She asked me if I would like to fill in a submission. I was surprised to see that even whilst the hearings were going on one could still file a submission – this demonstrated immediately that the research was continuing throughout the hearings, a fact that clearly demarcates it from formal legal hearings, where cases are formulated prior to court appearances, and if not fully prepared cases are postponed. She told me that her role was to help people that could not read or write to fill in the forms.

First the Commission Chairperson explained how the inquiry had been conducted thus far and how the hearings would work, including the point that they would be looking at issues, rather than specific cases. She explained the role of the legal team and the ways in which they would ask questions of witnesses:

Questions will only be for clarity of issues, not to discredit the witnesses or to make them feel accused. There will be no naming of individuals. The witnesses will be asked to outline any problems and they will then be asked how they think these problems could be dealt with (3<sup>rd</sup> July 2002 field notes).

Rather than summarising all the events during those two days<sup>70</sup>, I focus on three witnesses called to attest on the first and most dramatic day of the inquiry: first, a paralegal from a rural advice office; second, a farmers' union regional chairperson; both had been called as witnesses after having sent in written submissions. Third, I focus on a witness whose submission had been made that morning, adding to the sense of tension and drama of the performance as she recounted the events that interrupted the first day of the hearings. Other witnesses were called on that day, including another paralegal from a different advice office, and a health worker working on a farm, but I focus on three dramatically different performances, and how these 'types' of 'witnesses' make the sorts of representations that they make in their

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<sup>70</sup> The problems associated with the ethnography of court sessions are addressed by Atkinson and Drew (1979: 1-4) and the ethnography of court processes has been effectively carried out by legal anthropologists (see, for example, Merry 1990; Conley and O'Barr 1990; Clifford 1988)

daily lives. Three particular ‘types’ of representatives were called as witnesses on this first day, all from rural communities. The audience on this first day was made up mainly of farm workers and (a few) journalists.

The second day, by contrast, saw civil servants representing government departments being questioned about governmental activities: there was a remarkably small audience compared to the previous day’s hearings and smaller, if any, media presence. Not only was it difficult for farm workers to take time of work; it was also more important for them to witness their own representation and that of the farmers (by a farmers’ union). Including the two parties at the centre of the inquiry in the first day of proceedings appeared to suggest a sort of representational dialogue, although tellingly, this ‘dialogue’ was mediated by paralegals.

The first witness in the hearing was Elsie, a young Belgian woman who had been working as a paralegal in Franschoek Legal Advice Centre (FLAC). We were told that the legal advice office where she worked had filed a submission and that several issues had arisen from it. I took notes of her statements, each in response to prompts rather than questions. One such prompt was:

According to your submission there have been some problems with unfair dismissals. Could you please highlight some of the problems with the legislation and maybe the problems of the institutions etc., in place supposedly to help workers? (3 July 2002, fieldnotes).

The answer was implicit in the line of questioning; the statement was already made in the submission. Elsie was asked about the right to fair labour practices, and what the differences were for men and women in Franschoek:

In terms of recruitment there is a big difference between men and women farm workers, especially when accommodation is involved. The male worker is employed but the female worker is not employed in her own right – she is employed but if she came alone then she wouldn’t be – just because of her man. The woman then works during harvest season: she must be therefore available every time the farm needs her. Farmers put this into the contract with a section declaring that the family [of the tenant signatory] will work so there is one man and one contract for the whole family. This leads to specific disadvantages for the woman – she can’t find permanent work outside the farm because she must be available at harvest. There is a big difference between men’s and women’s wages. Women’s wages are very low in Franschoek. A man may get R120 – 170 per week and a woman will get between R80-150

per week. The women we speak to indicated that they are doing the same jobs as men sometimes but they are still getting paid less. Treatment is unequal: men are permanent and women are casual. When they use that word [casual], it means they think that person isn't entitled to sick leave, family leave, don't have to pay UIF<sup>71</sup> etc. The labour legislation says you are a casual worker if you work less than 24 hours a month (3<sup>rd</sup> July 2002, field notes).

As we can see from this extract, the paralegal is concerned with representing the farm workers, *and* explaining that where farm workers are concerned, the existing legislation often gets ignored. Her focus, which has come out of the submission, is on gender inequities, rather than racial ones, which are assumed. She uses specific figures to describe the inequity in pay differences, yet she is general and does not recount specific grievances, something that a particular submission by an individual would likely do; this agenda of generalizations had been set by the Chair of the Commission at the beginning of procedures. Later, Elsie is asked questions by the Commissioners to get her opinions on the situations of health, education and whether she had noted incidence of child labour. All the way through her answers she provided evidence of gender inequities, which as we have seen in chapter three, are important. In the above statement, she refers to the system by which the women are only hired on family contracts to which only the men are signatories. Her final question came from the lawyer who had previously questioned Elsie:

Franschoek is famous for its wines and there is a lot of foreign investment. Are those farmers acquainted with the Constitution and with the ESTA legislation?

Elsie: No, most are not. It is easily accessible. It is a rich community with many millionaires, but the only money [FLAC] got from the white community for a whole year was R100 (3<sup>rd</sup> July 2002, field notes).

The exemplification of particular issues and problems is important to note, because these kinds of stories and this kind of testimony were very common when talking to any rural civil society activist, who is concerned with *addressing* the problem. And they address relational problems recounted by groups or individual farm dwellers, by translating them into the language of rights, such as, the right to dignity, the right to a CCMA hearing, the right to security of tenure ... the list goes on. Publicly eliciting these problems and issues is not just a statement of fact. It is part of wider activity to

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<sup>71</sup> Unemployment Insurance Fund.

address the problems. With the final question the lawyer placed the local context in relation to the global market, and almost seemed to be asking if there was a correlative link between foreign investment and recognition of human rights and ESTA. Elsie replied by referring to the community of farms as a rich one (immediately marking farmers from farm workers in socio-economic terms), but one which does not make donations to the legal advice office. The statement makes a moral judgement that farmers are unconcerned with human rights and even with the law, even though a donation to the advice office from local farmers would not only give the wrong impression to farm workers about who the advice office was working for, it would not guarantee that labour and human rights on farms were still not being transgressed by farmers.

The Chief Executive of the provincial arm of a national farmers union, Mr Opperman, read out the Union's submission rather than answering questions based on it. This refusal had to be explained before Mr Opperman could begin, because the lawyer had prepared questions based on the submission to ask him, as had been the protocol with other witnesses. By this public action the Union was refusing to fully take part in the hearing in the same manner as others, from whom they were distancing themselves; they were telling their story rather than have it elicited by lawyers' questions, and therein lay their grievances with the enquiry. The union was explicit about its reason for doing this in the document:

We sincerely trust that these hearings will be conducted in a fair and objective spirit and that the sole purpose will be to find enduring solutions, not to *victimize* agriculturalists by using an array of unsubstantiated incidents to stereotype the entire agricultural community as human rights transgressors... Although we fully accept that a small minority of our members may from time to time commit human rights transgressions and that appropriate corrective action should be taken to punish such transgressors, we refuse to accept that the entire agricultural community should repetitively be subjected to vague and unsubstantiated claims that are *not subjected to proper legal scrutiny*. The agricultural community is deeply aggrieved by the ongoing tendency of certain NGOs and trade unions to publicly portray agriculturalists as deliberate transgressors prior to affording organized agriculture an opportunity to investigate accusations and awaiting the verdict of the courts. The consequences of this highly irresponsible course of action is that agriculture is often subjected to trial and conviction by the media and pronounced guilty before objective legal judgement is passed (p. 1 of

statement given by Carl Opperman of Agri Wes-Cape at the SAHRC Malmesbury hearing: field notes, emphasis added).

Mr Opperman was using his Constitutional right to freedom of speech here to question the legal legitimacy of the hearings, in spite of beginning by sincerely trusting that the hearings would be conducted in a fair manner. He reiterated that farmers are:

Loyal natives of this land who have sworn allegiance to our Constitution and Bill of Rights... determined to play [their] part in building a just society in which all our people, regardless of colour, race, creed or gender, will be free to exploit the full potential of their God given talents' (*ibid.*: 5).

Agri-SA's discussions with the ANC on land reform and apparent willingness to be South African subjects has been raised by Ben Cousins, who suggests that President Mbeki has drawn farmers into this rhetoric and listened to their concerns because of the perceived value of commercial agriculture to the economy, at the expense of small scale farmers and other potential economic routes in rural areas (Cousins 2005).

As well as questioning the legal validity of evidence from the hearing or inquiry, and glossing it 'trial and conviction' by media, Mr Opperman's statement also questions the scientific validity of qualitative research conducted on farms, with a positivist critique of its findings:

Chairperson, of grave concern to agriculture is the so-called research results that are often bandied about to corroborate a conclusion or a set of conclusions concerning farm conduct. Much of this research is unfortunately devoid of a sound scientific base and therefore has no validity other than to create warped perceptions that serve a particular interest. We refuse to be victimized by so-called research that is in contravention of the basic principles of universally accepted measurement theory. Those who use so-called research to frame agriculturalists as perpetrators of farm violence should be called to account with the same enthusiasm that they display in spreading their disinformation (*ibid.*: 2).

It is interesting to see evocative political and democratic language of accountability used to criticize forms of social inquiry<sup>72</sup> drawn directly from positivist critiques of qualitative methodologies and truth claims. The union was responding to what they

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<sup>72</sup> One wonders if this anger was directed towards the person of anthropologist Vincent Crapanzano, who caused controversy with publication of *Waiting: The Whites of South Africa* (1989).

perceived to be the ambiguous nature of the inquiry as well – the hearings’ quasi-legal nature. Its members were collectively angry at the use of unsubstantiated evidence and at the way this was subjected to the scrutiny of the media instead of that of the law – an accusation reminiscent of criticisms leveled at the TRC (see Buur 2001; Krog 1998). This kind of questioning is also interesting to a student of South Africa’s history. The farmer, formerly a symbol of white oppression of the black masses, is appropriating the style that the former ANC cadres used to use to question the legal legitimacy of the Apartheid state. White Afrikaners have previously questioned the validity and fairness of the TRC:

Most African respondents in a survey in 1996 agreed that “having the Commission at all means that all people in South Africa will be able to live together more easily in future”, and most Black South Africans questioned two years later in 1998, believed the Commission had been fair, as did a narrow majority of English speaking Whites. White Afrikaners did not (Lodge 20-27 March, 2003, *Mail & Guardian*).

Tom Lodge writes that the ANC was also critical of the process of the TRC regarding moral equivalence, actions committed by the ANC being equated with those committed at the hands of the National Party’s apartheid state. At the end of the article, he writes:

Whether people told the truth or not, or whether or not they could feel themselves reconciled with their former tormentors, the TRC was a crucial agency in reconstructing the South African state’s *moral* authority, in remaking the body politic (*op cit.* 2003).

I draw on this to argue that this Commission hearing intends once again to inform this ‘reconstruction of moral authority’ (*ibid*), framing moral authority around rights; that this public quasi-legal performance is a performance of the moral authority of rights through seeking general ‘truths’.

After lunch the Commission was informed that there was a late submission that must be aired as it affected the late start of the proceedings. I noticed that many more people were present in the audience now, especially farm workers. Diverting from the programme, the driver of a bus was asked to give an account of what happened on the way to the hearings. This interruption of proceedings caused a stir in the audience. The driver took the witness stand and told of how she had gone to certain farms in the Ceres region to pick people up who had expressed interest in attending



the event. The following is the transcript of the questions and shows how the driver responded to the bus being stopped by a foreman:

Mr. Moodlar: What happened today when you were on your way to these hearings?

Ms Claasens: I was instructed to go to farms and collect people to come here by the Committee.

Mr. Moodlar [reading the submission]: That is the Committee of the local ANC.

Ms Claasens.: I arrived on Protea<sup>73</sup> farm...

Mr. Moodlar [interrupting]: You cannot name the farm, Ms Claasens.

Ms Claasens: I arrived on a farm and one worker advised me that he wouldn't come because the farmer persuaded him not to. We took others with us. Then when we were on the N7 we were followed by a bakkie – it was the foreman who advised us not to come because it is during working hours. So the workers were afraid and decided to go back. They are not here.

Mr. Moodlar: Did these workers make arrangements with their employers prior to today to come to these hearings?

Ms Claasens: Yes, they did.

Mr. Moodlar: Thank you, we will consider what you have told us for the report.

For the first time in the hearing a statement was elicited which referred directly to physically present members of the audience, described a specific event, and even named the farm. This statement symbolically drew the attention of all there to those that were missing, prevented from attending. As all the other representations had been made mostly on behalf of people that were not there (farm workers and farmers), an audience made up of farm workers had been at least clearly visible – they were symbolic representations of *all* farm dwellers and workers in the Western Cape. But though they had made submissions, they did not represent themselves as such. A health worker<sup>74</sup> later talked about conditions on farms, but no farm worker actually spoke first hand about their experiences of working and living conditions on farms. It could be said that the paralegal could represent broader generalizations and due to this might be a more instrumental witness; as we have seen, the paralegal is indeed an ideal witness because they are easily equipped to move between identities

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<sup>73</sup> The name of the farm she mentioned has been changed for the purposes of this essay.

<sup>74</sup> Many farms now have social or health workers as part of the farm, almost always women.

and their daily work involves not only individual cases, but campaigning under more general rubrics (see chapter seven).

As it constituted a particular event, the above exchange was not published in the final report. This aptly demonstrates how some witnesses on that first day were called specifically to dramatise and intensify its symbolism, but also draws attention to the occurrence of intimidation of farm workers.

It provides a counterpoint to the other representational styles though, and also highlights who was represented by whom. Paralegals represented farm workers in the way demanded by the Commission, because as was shown in the previous chapter, this is the way that paralegals mediate between, and shift in identity with, various different actors and institutions; and, how they translate specific grievances into more generalized problems (from a relational point of view to a formal legal view). The state was represented by itself (the following day); farmers, by a union, but in the physical form of the farmer; and farm workers by a paralegal. As in the countryside, the farmer represents himself in his way; paralegals represent farm workers; and farm workers themselves have been intimidated and prevented from being there.

The second point that can be drawn from this example then is how it differs markedly from the other representations made. Farm workers were still being represented here, but the submission, being an individual one, did not need to be translated into general terms or issues, because the key issue, the imbalance of power, is evident in its enactment. The issue under a spotlight is intimidation and it needs little explanation. Moreover, in itself the statement is descriptive of farm social life, hierarchies and their enactment.

What is equally important to note, though, is the willingness of farmers to be *seen* to take part in the inquiry. This visibility produces a very interesting paradox which is not dissimilar to that discussed by legal anthropologists when noting how different groups use the same (legal) language and code to ‘pursue their varying and often antagonistic interests’ (Starr and Collier 1989:9). The questioning of the paralegal was in a style reminiscent of a court interrogation, although it was not a court room, with points of order and interjections from the commission panel. This panel was

comprised of experts, including Andries Du Toit, as well as the Commissioner mentioned above. When the farmer spoke, he had ultimate control over what he said, and commissioners could follow it by referring to their copies of that submission, but he refused to answer questions. He thereby cast doubt on the scientific and legal viability of the entire inquiry. Though it is nowhere else mentioned, in his statement he also talks of the victimization of farm owners. This is indeed representative of many farmers' views; they refuse to submit to another (albeit quasi) legal construction or authority, they claim that their own human rights are being violated through victimisation (a sentiment I heard from other farm owners, see chapter 6); they draw on a variety of legal forms. The final representative is the bus driver, who is representative through her testimony, of several nameless farmworkers from an only just nameless farm.

It is part of paralegals' political activism that they translate from the relational to the formal (see Chapter seven); this is their way of attempting to turn paternalistic relations into legal ones through the language of rights. They had matched the agenda of the HRC; whereas neither the farmer nor the woman from the union, in their divergent styles of 'witnessing', had conformed to it. The farmer's lack of conformity, consistent with his statement, was more marked. At no point was a farm worker attesting to what conditions on farms are like; mainly because it would immediately offer a relational point of view. This would not be general or formal information; rather it would more resemble the individual performances of the TRC. The attestation of the bus driver is more akin to the relativising moves made by farm workers, and she does not need to say a great deal to show how farm workers are easily manipulated through intimidation. Beyond this, any useful information for reporting on the situation in rural communities came from paralegals.

### **(In)visibility of the state**

The contestation and dramaturgy of the first day was remarkable, and the media took particular interest in getting a statement from Mr Opperman as he left the building. His submission was reported on local radio news the following morning and I listened to it on my car radio as I made the drive back to Malmesbury. The account of the first day above, demonstrates the ways in which the hearings were formatted

around themes and issues, rather than specific events and persons. It also shows the ways in which representation (rather than specific individual accounts of violation) is used to emphasize the general nature of the questions and submissions used, a point to which I will return to again later. The paralegal translated the individual cases that she deals with daily into general impressions, in response to the questions that were carefully planned in order to lead to general assessments rather than particular cases or narratives. Lawyers from LHR did not appear during the inquiry; they were unable to present specific legal cases that they dealt with on a daily basis because their time was taken up dealing with ongoing court cases – a different sort of legal scrutiny. Though they could have provided generalized accounts of the incidence of eviction, of the limits to rural access to justice, or of farm workers' and farmers' ignorance of the existence of ESTA, the paralegal was also able to do this. In any case, current cases that the SFP were dealing with could not be discussed publicly due to their legal status as *sub judice* (under judgement).

The hearing was not accusatory and separated itself symbolically from the ways in which relations and negotiations were conducted in the communities themselves, where accusation and violent antagonism are commonplace. The organization and planning were intentional: the design was that each representative of the core role players should speak on the same day, whilst the representatives of the government departments should speak on the second day. The importance of this kind of dramaturgy and visibility is highlighted here, suggesting that the TRC is acting as a blueprint for this inquiry, if not in form, then in its substance. The testimony of the farm union chairperson shows how the union seeks to undermine in a defensive manner the activities of these hearings.

The following day, it was the turn of the state to be interrogated, represented by the various government departments that vest an interest in farming communities. The department of Land Affairs was represented, as were the Department of Labour, the SAPS, the Departments of Education and of Health. I do not have space to go into a full description of that day; suffice to say I observed that the second day of the hearing lacked the dramatic content and intensity of the first. Several observations that might shed light on why this is so come to mind. There were very few people in

the ‘audience’ compared with the previous day (conspicuously, no farm workers<sup>75</sup>, and no press). Instrumentally, of course, all representations would not have fitted into a one day hearing. But what seemed most intriguing about this separation was that it seemed to represent how the state has thus far been relatively absent since the end of Apartheid in making sure that new laws were adhered to in rural areas, a problem that was raised in each of the interrogations, and it has been this invisibility that has been questioned by activists and NGOs. This might be viewed as a symbolic removal of the state and of state resources from farm dwellers’ and farmers’ lives – which itself is a public performance of the marginality of farm workers in relation to the state. Such a removal has been viewed by activists and academics as part of the reason why paternalism continues to exist. With the new laws, they argue, the state has not done enough, first to check whether laws were being complied with (a criticism towards the Departments of Land and Labour, and the SAPS); next to provide their services efficiently (the Departments of Education; Housing; Land; and the SAPS); last but not least, failure to prosecute in cases of non-compliance (the SAPS; crucially, the Department of Justice; Department of Labour) (Claasens, 2005; Karuiki 2004; Ahmed et al 2003; Hall and Williams 2002; Kamishni, 2002; Meer 1997). Municipalities do not fall beyond the scope of these criticisms either, as the RDP processes had not produced either agreement or delivery (see Jensen 2004: 193-5). One key problem though is generally recognised among these critics: that there has been a failure of state departments to communicate or co-operate.

This Commission process as a whole can be seen in the context of the nation building agenda of the transition era, towards the objectification of farm communities as ‘sites of governmental intervention’ (Jensen 2004: 187); as ‘moral communities’ (ibid: 196). ‘Legitimizing the state’ (Wilson 2001) in this way has been enacted by reframing law around nation building, establishing a ‘culture of human rights’, and creating new forms of legal and moral knowledge (Ross 2003), so that citizens become participants in a ‘legal conversion’ in order to further legitimate the nation. That this resonates strongly with the central role and status of law that legitimized Apartheid has not been lost on observers (Jensen, 2004; Buur 2001; Wilson 2001). It

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<sup>75</sup> Interested farm workers would have only come for one day (away from work) and would naturally be more interested in seeing how their own submissions and those of farmers had been represented.

is also productive of re-establishing a role for the state as purveyors of a moral economy. It has roots in the legally hegemonic political environment of Apartheid, from whence the freedom movement, or its contingent parts, organized to fight the Apartheid regime, using legal means to fight political battles (Abel 1995). ‘Conversion’ denotes change and refers to the centrality of the Constitution in the political economy; the proliferation of human rights language (as opposed to other non-legal or relational discourse<sup>76</sup>) and legal NGOs (Abel 1995: 10; see also Oomen 2004), just some among many examples, all serving the end of building a legal uniformity away from the legal plurality of apartheid (Wilson 2001). However, as I have shown thus far in the thesis, this has been built on legal plurality, since in the consciousness of some, new laws are not applicable, and even where they are, they inform rather than redress existing forms of legality (paternalism).

I have adapted Posel and Simpson’s edited volume of essays on the TRC, *Commissioning the Past* (2002) in the title of this chapter. A comparison of this inquiry with the TRC hearings is not the only focus here, but I reference that phrase because this chapter in part assesses the ways in which attempts are made to address human rights violations happening in the present, specifically through activities of the SAHRC, by using the form of a public inquiry akin to the TRC to deal not with past atrocities but with contemporary human rights violations. The TRC however was employed at a particular junction in South Africa’s history (the ‘transition to democracy’) to address the human rights violations of the past and thereby symbolically mark a break away from it. The ways in which this was done have been examined extensively, but I particularly draw on Richard Wilson’s book *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (2001) as it offers important theoretical insights and a Weberian analysis of the style of ‘truth production’ at work.<sup>77</sup> I show how this Commission attempts to mark another moral break with the past. I compare and contrast a permanent commission’s quasi-legal work with one that was purposefully transient; showing how the TRC created a particular way of managing and reformulating information on rights abuses

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<sup>76</sup> See Conley and O’Barr (1990).

<sup>77</sup> Others have also looked at the TRC, and found, for example, that the ongoing inquiry in producing truth was flawed at many levels, and seemed more successful in its performative elements, such as the public hearings (Buur 2001).

simultaneous to its re-articulation of a major role for law in nation-building. I also suggest that the post-Apartheid ANC government uses civil society and commissions, popularised through the TRC, as a particular form of legal governance in South Africa (Gupta 2001). As Jensen has shown, Commissions have been responsible since the early 20<sup>th</sup> century in defining the identity of the coloured class in response to rapid urbanisation and the resultant 'poor white problem'.<sup>78</sup>

To what extent is the SAHRC implicated in this nation building project for which the SATRC forged the foundations? The SAHRC, by its constitutional mandate, uses a TRC style of inquiry in order to further the nation building agenda of the transition and to some extent publicize failures in the much debated land reform programme. Pursuing a general commission inquiry (rather than individual cases of human rights violations or court cases, which the farmers' union requests) reiterates publicly a national need for this body and for such public quasi-legal displays that relate specifically to the pursuance of a human rights culture and a more uniform legal identity. However in its actions, perhaps unintentionally, it reaffirms the status quo whereby farm workers are represented by mediators where farmers represent themselves. Individualistic human rights become one collective, public and civil issue; law is used as a tool to draw civil society around these rights. The inquiry is necessary because reports from NGOs, paralegals and the media have shown that farm communities are in many ways stuck in the past. An alternative course of action might have been court cases. However, with criticisms levelled at the Department of Justice, and court cases not producing desirable outcomes for these communities at best, this course of action had to be investigated as well. Since none of the *stakeholders* investigated in this inquiry had behaved much differently from how they did 'the past', court cases, it seemed, were not calling to account continuous rights violations either. The State had not accounted for its actions. This did not correspond to nation-building and the new morality.

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<sup>78</sup> In his doctoral thesis, Jensen identifies at least three such commissions that created governmental knowledge about coloureds between 1938 and 1950: 'The Wilcocks Commission of Inquiry into the Cape Coloureds (Wilcocks 1938), the Cape Coloured Liquor Commission (1945), and the Commission of Inquiry into (Non-European) Deviate Children (1950)'.

The problem I expand upon in my conclusion is that though the inquiry utilises this symbolic reference to publicise itself generally, it also feeds the information back into the active rural civil society movement, as I witnessed. The inquiry demanded that submissions be investigated, and LHR was called to investigate a submission that described effective arbitrary eviction. The processes of information sharing and representation that the inquiry uses, then, are circular. Where do the people at the centre of the enquiry, the farming 'communities' in question, fit into the overall configuration that has been drawn by the wider civil society? This question concerns the inquiry's detractors, who have traditionally managed relations on farms in the private sphere of (neo) paternalism, as well as farm workers who have to some extent colluded in reproducing it (Du Toit 1998; Ewert and Hamman 1996; Meer 1997). Ways in which negotiations are made in farming communities nowadays were made public and translated into the currency of rights by the SAHRC when it embarked on this ambitious inquiry and opened up a public arena in which to display the activities of its work. Moreover, as I have shown above, the SAHRC is calling the state to account.

### **Truth and reconciliation: Law's negotiated place in post-Apartheid South Africa**

The promotion of reconciliation as opposed to other tactics of negotiation of past abuses was established through the ritualisation of truth telling and forgiveness in human rights violation hearings as part of the TRC. Wilson has examined the way in which this tactic was pursued despite opposition that it often met among victims' families (2001:147-149). 'Anthropologists', writes Lodge, in the same article cited above, 'suggested that the TRC's emphasis on forgiveness and restorative justice was at odds with more popular ethics of retribution and punishment' (2004 20-27 March, 2003, *Mail & Guardian*). Nation building becomes a particular form of governmentality that is continually pursued in various sectors of public life by a Commission (HRC) that must continue to meet its own mandate, a Constitutional one, in the current political economy. The methodological and ideological underpinnings of the inquiry were so similar to those of the SATRC that we must seek to establish what this means; why is so particular a model continually being



pursued if, as Wilson argues, the SATRC was such a liminal stage of legitimizing the post-Apartheid state (*ibid.*: 19)?

When South Africa began its transition to democracy in the early 1990s, everything was in place to bring about a newly forged national identity based on a 'culture of human rights', beginning with the writing of the Constitution that incorporated a universal Bill of Rights. A very strong legal tradition had been established by the incumbent democratic politicians, and this tradition had apparently seeped to the core of the communities from which the ANC had been born. Lars Buur observed that in order to bring this culture of human rights to fruition, the gross human rights violations had to be dealt with carefully and also legally,<sup>79</sup> neither juxtaposing the recounting of the violence of the past with the sense of achievement that this negotiated democracy brought about, nor ignoring or simplifying the past in a way that might alienate significant segments of the population from the activity of nation building (2001: 151). The TRC, including amnesty in cases where human rights perpetrators disclosed their truth of events, was thus part of the brokered deal. Buur argues that the Commission suspended space and time in order that it should be independent from the state (*op cit.*: 159): this is a very important point to note. Wilson argues, applying van Gennep's (1909) and later Turner's (1967) meaning of liminality in the context of the functions of ritual, that such a suspension of time and space in the TRC hearings gave it a liminal ambiguity necessary to make a break with the past and to herald in the future, with implied between-ness characterized specifically as ambiguity and reversal of normative behaviour (2001:19, 115-118). The quasi-legal performative nature of the TRC hearings, as Wilson highlights, demonstrated to a mass audience that past human rights violations were being dealt with and that the past was being 'othered' (also Buur, 2001: 152). The audience, it is argued, played their role as consumers of the events that made up the hearings, a role almost more important than the events of the hearings themselves, in that they were to believe that they themselves were the protagonists in the formation of a fresh new

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<sup>79</sup> The carefully negotiated Constitution was agreed to on the understanding that violators of human rights in the past would apply for amnesty, rather than be subject to the hand of the law (see Buur 2003 and Wilson 2001; also Boraine 2000)

nation state.<sup>80</sup> The additional value of TRCs being more accessible and intelligible in terms of the ‘legal consciousness’ (Merry 1990) of ordinary people adds to the freedom granted them by their liminality and their ‘theatricalization of power’:

Truth commissions are transient politico-religious-legal institutions which have much more legitimizing potential than dry, rule bound and technically obsessed courts of law (Wilson 2001: 20).

The quasi-legal status, character, performance and drama of events, in addition to the potency of the TRC having a mass audience, also reminded South Africans of a new culture of disclosure and openness – it was symbolic of the new legal reality that was to be fostered by the citizens of the new legal order. But, as Wilson shows, it was not popular with some of the grass-roots freedom movements of the 1980s and early 1990s, and it therefore sought to symbolically distance itself from violent retribution that parts of the movement still promoted, by using religious ideology and various other strategies, within this visible liminal setting (2001: 164 -185).

By contrast, the focus of the HRC inquiry hearings was upon inviting people to ‘shed light upon the shortcomings’ of human rights recognition in farm communities, rather than on ‘conducting ... hearings in an accusatory way [and]...leaving with a guilty/ not guilty verdict’ (fieldnotes: 3 July). This represents a marked departure from the TRC hearings, which focused on the truth as coming from the ‘victim’, the ‘perpetrator’ and the ‘witness’ respectively (Buur 2001: 152, 155; also Ross 2003: 176).<sup>81</sup> Indeed, the word ‘victim’ was removed from the language of the Western Cape HRC hearing and was not used in the report. However, the use of the word ‘violation’ assumes the existence of a ‘victim’ and a ‘perpetrator’, and is more powerful legally than ‘shortcomings’ in the recognition of human rights. In fact, this shift suggests that many experiences on farms, such as illegal eviction, or payment in tot,<sup>82</sup> are fairly uniform in character. The removal of the word victim from the

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<sup>80</sup> Following Merry (1990) and Conley and O’Barr (1990), Wilson notes that there were usually other reasons for bearing witness in violation hearings than national healing or nation-building (2001: 142-3).

<sup>81</sup> This fits an overall theory of the project of the TRC as being a ‘constitutive separation’ from other processes at the time, so that it was ‘produced by a suspension of *temporality* and a suspension of *place* to create new *time-places* at the margins of the political and social domains of society’ (*ibid.*: 159, emphasis in original).

<sup>82</sup> The colonial system whereby payment of wine was made in lieu of money, a practice that occurred mostly on wine farms. This system is illegal and no longer practiced in its original form. However, wine is still given out as a ‘perk’ (Rust 2003) and results in exacerbation of social problems, such as

hearings and report perhaps suggest that victim is a part of a narrative of the apartheid past in South Africa, which had already been symbolically othered by the TRC hearings. However, it further articulates a continued and perceived need for farm workers to become not victims in terms of paternalism, but active legal agents. Again, it attempts to purvey a legal morality in quite a grand way.

To an extent, the hearings were, like the TRC violation hearings, suspended above legal time and place through use of specific time frames and spaces. One gets the impression that the TRC became a blueprint for commission hearings; could we call the HRC a generic of the original TRC? Though similar, some of its ingredients have been modified slightly, such as language, which is marked apart from court speech acts in the case of the HRC hearing; in its public hearings the TRC provided more formal questioning associated with criminal courts, scrutinizing events and their details. The focus on issues rather than on particular emotionally fraught past events or individual personalities draws one away from over-emphasis on comparison with the TRC. However, the way in which the hearings were ritually set apart from quotidian legal activities is very interesting, and was not ignored by many of the actors involved (see below).

If we first take the idea of ritual time, we can already see the use of a specific time frame and spatiality, outside quotidian law or state activity: the hearing that I attended was held in a municipal hall. This, although not a court, was a town's symbol of local participatory governance. There has been recent encouragement to draw local governance into the processes of land reform and to address the RDP process towards issues within these structures (Cousins 2005) and the use of the municipal hall was possibly intended to draw in the state at the local level. However, it also marked out a space that was neutral to the farming communities in question.

The inquiry as a whole was made up of the following five phases: 'launch and publicity; research; hearings; a national conference; and training and human rights

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domestic abuse, and health problems such as alcoholism and 'fetal alcohol syndrome' (see London 1999). A representative from the NGO 'Dopstop' was questioned at the hearing about the prevalence of such practices on wine farms and said that unofficially the practice continued on many local wine farms. See also chapter four.

education' (SAHRC: 2001).<sup>83</sup> The last of these is part of the ongoing work of the HRC as well as that of paralegals and other rural legal activists. The hearing had a predefined limit of two days, the standard set for each provincial hearing. The only difference in each province would be the issues taking precedence, i.e., those issues which were most keenly observed in a certain province, for instance, the 'dop' payment system, in the wine producing Western Cape. Buur (2003) talks about the 'exceptional position of the SATRC,...an institution where time is compressed and where many things have to be done in a hurry, with no time for following the normal schedules of the state' (2003: 159), and the fact that it purposefully disconnected itself from state activity. The hearings performed for this inquiry are similar: they are important visual symbols of the process of the inquiry. They are outside of normal law, and therefore do not ask the same sorts of questions, or make the same sorts of judgments as the law, and set no punishments; recommendations and human rights education are determined in the place of judgement and punishment; litigation might yet be taken in, for example, the ESTA case referred to above, but this is to be pursued outside of the space and time of the inquiry. Though situated outside of the law, these hearings follow a framework that is necessary to their legitimacy: this framework is the moral currency of human rights (which are law) because the Commission is answerable to the Constitution and a 'culture of rights' is meant to be being fostered, made 'real', by its mandate.

Like the TRC, the HRC hearings had the visual aesthetic of a court room scene; on the right side of the stage was the witness chair; behind that were translators and interpreters, in the middle to the back of the stage were the commissioners and panelists, and to the left side of the stage sat the Commission's legal team. To the right of all of these sat a stenographer. So the quasi-legalism that informed the whole inquiry was determined further by the performance. However, the questions that were asked of the 'witnesses' were very different from those that a lawyer would posit in a court of law. Buur points out that one reason for the effectiveness of a (Truth) Commission is its 'quasi-legal status, which [helps] prevent the interruption of story-telling sessions by lawyers drawing attention to legal technicalities (Wilson

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<sup>83</sup> The latter is an activity to which the SAHRC is mandated to do at all times and so making it a particular 'phase' in a course of activities and events highlights this space-time separation even more.

1996: 16)' (Buur 2003: 151). I noted the very same, but in addition to that, the types of questions asked and the language used had changed dramatically – labeling the 'victim' and the 'perpetrator' began and ended with the TRC, and these labels were conspicuously absent from the HRC hearings. Instead, the Commission investigated 'human rights violations in farming communities' – the language became passive. The Commission was explicit in its reasons for this, both at the hearings and in its report on the inquiry:

The inquiry sought to identify broad trends and the underlying causes of human rights violations at various levels in farming communities. Therefore, individual names of various perpetrators were not mentioned (SAHRC, report on the inquiry into human rights in farm communities).

In terms of legality, of course, there was no recourse to accusation. As shown in the description above of the interrogation of the bus driver, though names were not named, it was clear that farmers were symbolically on trial here. The farmers attempted to discredit this symbolic legality, its performance and the methodology of the inquiry, partly by refusing to take part in the prescribed fashion. Indeed, by not naming names or actually accusing anybody of anything, the use of the word perpetrator is briefly allowed in the report, to remind us that human rights violations are being committed but perpetrators' individual names would be omitted. The language remains necessarily passive and general, and the use of such words is kept at a minimum. It is clear that in the rhetoric of human rights, there are some ideas that, in the process of examining rights, are implicit and therefore unavoidable, such as the existence of a perpetrator rather than an historically located set of social dynamics; another form of law. In fact, the report disseminated from the inquiry was much more explicit in its language in the way that it frames these issues as 'abuses', 'violations', having been 'committed', by perpetrators; more explicit than the performance of the actual hearing, and yet interestingly still passive in tone.

General issues that were raised in these three performances are as follows: Gender and inequality in the workplace; poverty and inequality of access to public resources; security of farm workers (evictions); questioning the authority of the inquiry (the farmers' concerns); and intimidation. These issues are also highlighted as themes in the published document from the enquiry. They do not merely resonate with, but

replicate the issues that I have drawn out through my research on ESTA and with farm workers. Each issue has been seen in ethnographies of farm workers and from other research in this area. The marginality of the farm workers and the insistent holding onto authority of the farmer replicates paternalism on farms. This is a striking dramatic performance in a public, not quite legal, setting of the relations that have informed farm paternalism; the same relationships that have been described in the same ways in this thesis. Only relational, and personal dialogue of family is not visible, as it would require the details and narratives of particular personalities, no doubt present in many submissions<sup>84</sup>. But the issue of families is present in the set of social problems brought to light by the inquiry, in witness accounts and submissions, in the account given by the paralegal, Elsie, described above.

### **The final stage of the inquiry, the report: Power and other findings**

On Human Rights Day 2003, I attended an event at the Goedgedacht Trust outside of Malmesbury, organized by a rural activist/paralegal friend. Amongst the VIPs (in the main, government and legal role players that had a particular stake in rural development) who attended this event was Judith Cohen of the SAHRC, who was then writing the report on the inquiry. We talked about the dynamics of the hearing in Malmesbury. She said something which, though it did not particularly surprise me at the time, later made me think about the nature of knowledge production and research that is circulated through the various NGOs and individuals that operate in the area of farm workers' rights. She told me, 'basically this inquiry... the report... everything that it boils down to is all about issues of power and who exercises it. The farmers still have the power over the workers and dwellers' (field notes). What struck me about this conversation was how this Commissioner, a human rights lawyer for some years, thinks about rights abuses in sociological terms (though it also struck me that she was also being complicit with me as a fellow academic sympathetic to the cause of the movement). As an experienced lawyer, particularly with ESTA<sup>85</sup> work, she is aware of the research and writing that already exists about relationships in farm communities; by writing this report based on the inquiry, she is

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<sup>84</sup> This is something that I would be interested in inquiring into in future research.

<sup>85</sup> Before being employed by the SAHRC, she had been working on the Security of Farm Workers Project at LHR in Stellenbosch.

also adding to this body of sociological knowledge. In that case, I was interested to know how she had written about the inquiry, and what the results would be. This idea is in fact expressed within the first few pages in the introduction of the report which previews the findings and recommendations:

The inquiry dealt with issues relating to relationships, power and access. These issues are the key to unlocking the enjoyment of rights that are currently denied (SAHRC 2003: vi).

Here I examine the way in which the report is written and to what ends, who it is intended for, and the kinds of people who will read and use the report. I aim to show that as well as influencing policy making, it is hoped that the written document produced by this inquiry will be used to further research in the area of rural rights, to influence court decisions that involve the legislation, and to further educate those who enact or argue against the legislation, specifically government departments, and also NGOs, paralegals and lawyers. The findings and recommendations are often based on the sum of assessed recommendations of the role players, but they also refer to the Constitution, and, as with the TRC, to nation building.<sup>86</sup> One may ask, in that case, what ends must such knowledge serve? I argue that rather than the knowledge produced by the hearing being the motivation, it is the presentation of this knowledge, the language of rights in which it is couched, that is important. The details that the report provides are expressive rather than factual; perlocutionary rather than locutionary (Tambiah 1981: 127-8), as these are well known and discussed in the community of activists who will read it

In order to investigate this, one must look at the document itself and the way it is presented, who it is for, and why it has been produced in such a manner. It is organized in three parts, and is then segmented into four national issues. The first part sums up issues that were relevant on a national scale; the second part deals with these issues province by province, and therefore highlights local variations regarding the general issues; the third part is 'findings and recommendations'. I would like to highlight here the way in which the issues are divided, into: land rights; labour;

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<sup>86</sup> The 'Afrol' news website reveals how the government and party reacted to the report: 'South Africa's ruling ANC party today reacted to the Commission's report, saying it "did not reveal anything new," but had "served as a stark reminder of the challenges we have to deal with as a nation."'

safety and security; and economic and social rights. The first observation to make here is that these divisions seem to correspond to specific legislation and government departments, respectively, the Departments of Land Affairs and Labour; the SAPS and the Justice System; Municipalities, Departments of Housing, Land Affairs, Education, Health – the State itself. ‘Economic and social rights’ critically assesses the alleged problems between the Departments of Land Affairs and Housing, but tackles probably the widest range of government departments and how they interact. My second observation is that this list of issues was given in the initial stages of the process, was processed into the theatrics of the hearings via issues garnered from submissions and was incorporated again into these very general, universal and legislature-like subtitles. Thus, a general and universally applicable language again transfers itself onto individual problems – problems are put through the rights machine and come out as general issues.

This perlocutionary communication is not intended for these communities necessarily, but for those representing farm workers, or calling to account those supposed to represent them. There was a separation between the staged activity of the hearing and the audience (in addition to the separation of the inquiry from state and legal activity). The majority of this audience, particularly on the first day, was farm workers, but importantly, the media were also present. What we already know about the majority of farm workers is important here – the fact that as a group they were kept at the margins of society in the past and in a permanent state of paternalistic relations on farms through lack of education, amongst other factors (see Du Toit 1995). Most farm occupiers<sup>87</sup> over the age of 30 are semi-literate or illiterate and do not have access to internet. They would have little opportunity to learn what the report has to say unless they were affiliated to a union. So though this report is about relations in farm communities, its target group is not the farm workers. Farm workers already know what life on farms and in their communities is like – and some attended the events to consume and witness the performance of people listening and recording the reproductions of their experiences. Those that attended were also

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<sup>87</sup> This is a translation of the Afrikaans word ‘okkupeerder’ and refers to the tenant of a house on a farm. For further explanation of the history of tied housing and the Labour Preference Policy, see Hill-Lanz and O’Grady (1997: 116)



politicized; in a sense, it was this performative aspect of the inquiry (as well as the sheer existence of the inquiry) that mattered to them, who would likely not cite one occasion but several occasions where they felt their rights had been violated, and might perhaps themselves have been able to answer general questions with general answers. Could it be for the farmers, for them to learn the tones and dynamics of the language of human rights? Is it for them to look at the power relationships and dynamics, and learn how to change them? It is easy to see from the way in which the farmers' union rejected the very foundations of the inquiry that farmers will not be reading or referring to this document in the near future, and that the document itself is, for the union at least, a manifestation of unscientific and legally questionable research. Perhaps its aim was to reach farmers, to encourage them to act on the moral gaze on their power and authority. Like farm workers, farmers' voices are not prevalent in the report, but are interpreted; in fact, representations of all voices are interpreted and re-represented – it is representation that is given voice in the script.

So we have a reproduction of knowledge that is for somebody else. It is thereby assumed that the central subjects of the report, the farmers and farm workers, will not be active in changing the conditions in which they live and work; that somebody else will take responsibility for the situation on farms. However, the 'general recommendation is that a Farming Community forum be formed at a national level where farm dwellers, farm owners and government can interact... and... address the many difficult challenges that are recognized as facing farming communities' (2003 SAHRC: vi). Interestingly I had earlier been at a forum meeting that had been organized by the PLAAS, and in attendance at that had been other NGO people. The people that this knowledge is meant for are the very people that produced the knowledge in the first place: it is for, and simultaneously from, the NGOs, the paralegals, lawyers, unions, and government departments - the same interlocutors that represented the farm workers and owners at the hearings. It seems to me that the very people who were integral in forming this inquiry are the people to whom it is aimed. Those people whose daily work involves representation, lobbying, advice, etc., in these communities; not the people picking the apples or sorting the grapes. It is the NGOs, the lawyers, the paralegals, and the unions, that will draw most from this document, in order that they may continue to lobby and represent on behalf of

their clients (cf. Riles 2000: 51-2). And it legitimates further the idea that the rural areas under discussion are communities, morally distinct and face challenges.

This document is also for the Human Rights Commission – valuable written and published presentation of its work – evidence that it is fulfilling its Constitutional mandate, and that the Constitution itself is used to scrutinize social relationships. Indeed, it seems that alongside the performance of the hearings, the document that the inquiry produced was another form of performance. These recommendations are the same that have been made by NGOs and researchers; it is their official and public representation and reproduction in a quasi-legal context and in the rhetoric of rights that marks these recommendations apart – they have been officially sanctioned by the SAHRC.

In the report the dramaturgy of the public hearing is removed and responsibility for human rights abuses on farms is placed primarily on the state, and the inefficiencies of law. The issues that I have highlighted in this thesis are dealt with in turn in the report, but are not referred to using the terminology or the sociological construction of paternalism. As in this thesis, the report is separated into issues. Paternalism is not itself an issue but is recognizable in the ways that issues are separated.

This chapter has examined how the SATRC has impacted upon current practices of legitimizing legal culture, as process and product. Current commissions continue the work of the SATRC by attempting to incorporate people who have not yet corresponded with what the new democracy aims to personify. That is, a ‘nascent civil society that transcends the particularism of political organization based on identity’ (Sisk, 1995:253), i.e., ‘ethnic and racial forms of identity and/or forms of political organisation characterised by being undemocratic and violent’ (Buur, forthcoming). Drawing particularly on Buur (2002; 2003) and Wilson (2001), who analyze the role that the TRC served in legitimizing the new nation state in South Africa (Wilson 2001), and creating a symbolic break with the past (see also, Krog 1998; Holliday 1998; Wilson 1996), governance and civil society have become structured around converting a legal culture associated with Apartheid into one that resonates with a uniform project of nation building. Setting up of a legal focus onto relations on farms provides a rare public view of a normally invisible realm. As

paternalistic discourse appears to survive new legal conditions, other actors enter into these relations, whether these actors are commissioners or paralegals. Human rights are fore-grounded to legitimate the formation of a culture of rights and paralegals in particular, because of their identity with farm workers, are propelling this moral message.

The following chapter returns to the family in human rights. The way of seeing family as the organizing schema of paternalism is inverted, as the culture of the family is used as a right itself. The focus of lawyers dealing with ESTA and 'culture' of the family becomes something that cannot be separated from the racial, gendered and class components of paternalist discourse. Is paternalism a form of culture to be described? Should culture, a construct that changes over time and with different inputs be recognized by law at a time when race, class and culture is set aside in favour of a nationalist discourse of equality and rights? Should the law recognise cultural issues, when the problem might not be seen as culture as such, but as breaking the law? As well as raising these questions as potential areas for further reflection on the arguments and data presented thus far in the thesis, the next chapter returns to ethnography addressed in the introduction and looks specifically at these ethnographies in the light of arguments developed. The next chapter therefore concludes the thesis.

## Chapter 9 - Conclusion: The Right to Family Life and Evictions Revisited

Section 6 (2) (d) of the Extension of Security of Tenure Act (ESTA) states that among other rights and duties, an occupier shall have the right ‘to family life in accordance with the culture of that family’ (1997). This chapter investigates the shifting focus on ‘family’ and cultural notions of family that this right, ‘nested’ in the Act (cf. Claassens 2005: 9; Riles 2004: 783), performs. By analysing how this section of the law has been understood (from a legal precedent) by an SFP lawyer, I also draw together the themes and analyses of the thesis in this chapter. Following the analysis of the ‘right to family life’, and discussion of what this right could mean from an anthropological point of view, I return my analytical gaze once again to the evictions described in the introduction in the light of the arguments made in the main body of the thesis. I draw out some of the themes that these descriptions have brought to the remainder of the thesis, and in doing so I trace the arguments made in each chapter and discuss how these have contributed to answering the key questions that inform the argument.

### **‘The Right to family life according to the culture of that family’**

In a recent paper, Aninka Claasens (2005) criticises the absence of family rights in the recently enacted Communal Land Rights Act in favour of individual, and indeterminately defined ‘community’ rights to property and land tenure.<sup>88</sup> In ESTA, the family and the culture thereof have become increasingly valued as a tool of litigation even though the ‘right to family life’ is nested within a law that is determined by individual rights and by the importance of property rights.

This right gained prominence among lawyers and paralegals dealing with evictions because of its use in certain cases and the possibility that culture could play a role in protecting housing tenure. It was used as a means to an end without much consideration of the implications that such arguments might have. As seen in previous chapters, as legal evictions are becoming more commonplace, due to farm owners’ increasing knowledge of the workings of the Act, staying one step ahead of

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<sup>88</sup> She argues that these correspond neatly with ‘traditional authorities’ which further entrench patriarchy and undermine the position of women, even though womens’ right to equality are accorded importance in the Constitution (see also Comaroff and Comaroff 2003).

such knowledge was vital, and therefore the emerging value of ‘cultural’ knowledge to legal practice that was produced is the subject of discussion here.

The right to family life is important in the way that it is established in the law, and in the way that it is introduced to address past discriminatory practices in the context of the courtroom. As seen from the discussion of ESTA in chapter one, the fundamental rights are first listed, followed by the rights and duties of the occupier. These rights cascade from the right to security of tenure; that if one has security of tenure, ‘without prejudice’ (ESTA, 1997) to the fundamental rights listed in section 5 and to subsection (1),<sup>89</sup> to all the other rights listed in Section 6(2) (see chapter 1; also ESTA 1997: 10, in appendix) that include this right to family life. The right to family life can only therefore be determined for an ‘occupier’, yet as we see below, it is now being used to *determine* occupier status.

It addresses past discrimination because of assumptions made about women and children (including grown up children); that they have not been viewed as occupiers of a house on a farm in their own right. In the past, women got houses through their husbands and their parents. This practice continues or has until recently, since most farmers now enter into economic contracts that are separate from labour contracts. The law must address this, and therefore the right to family life is included. However, this is not always how it is interpreted, either by the lawyer (who I quote below), or by occupiers (legal term in ESTA for farm dwellers). As it continues to be interpreted, there is in many cases continued reliance on the occupier status of the man of the house to provide occupier status for their families. In this respect ESTA is somewhat contradictory, as it is reliant on the rights of an occupier, as we see below. However, if this reliance provides an independent right of tenure for, for example, the wife of a permanent occupier, the section of the Act under consideration provides a means to the end of providing individual (rather than family) tenure, for each person in the house. However, if this has to assume the former (farm based) rule of only hiring men with families, and only providing one contract to the man, in which the rest of the family would be drawn upon to work if necessary, then it is an a priori

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<sup>89</sup> Which is ‘the right to reside on and use the land on which he or she resided and which he or she used on or after 4 February 1997, and to have access to such services as had been agreed with the person in charge, whether expressly or tacitly’ (ESTA, 1997:10).

assumption that the occupier is the older man – and therefore the status of other members of the family has been, and continues to be, one of dependency. If this section of the Act is a means to an end, then, it also assumes dependency on a permanent occupier. Women are therefore particularly affected by their prior lack of rights. For instance, ‘rural women cited the problem of... being evicted from rural land when their marriages end or their husbands die’ (Claasens, 2005: 10).

Another connected problem I address here is the notion of culture contained in this right, and in this law overall. The ‘culture’ of most coloured farm workers is in fact for the most part characterised by paternalism, and governed by paternalistic farm relations on farms. The part of the law that acknowledges the particularism of culture, in part honours this situation, since cultural assumptions about dependence are integral to the maintenance and reproduction of paternalism on farms. The ‘cultural “logic” of paternalism’ (Sylvain 2001:725) is furthered. This is, I argue, one way in which the law fails to erode paternalism. But since the thesis has also been concerned with families’ and individuals’ experiences of family life and how this related to houses, I am concerned as to how mobilizing this law feeds into practice, and also with how practice feeds back into the law. In previous chapters I have outlined the purposive gaps and separations that farm workers and dwellers create themselves to move around the margins of paternalism, part of this being their collusion in simultaneously creating such ties. I therefore demonstrate below how the process of law feeds into local understandings of family life, and vice versa. I investigate the sources of the legal assumption that dependence characterises family life for most farm workers, and argue that ultimately this law reinforces the authority and hierarchy of paternalism, by recognising forms of sociality and dependence therein, as ‘culture’. The discussion inquires what form is taken by cultural knowledge about the other, in the legal gaze. The argument will show that the law cannot avoid addressing evictions in and through notions assumed by the paternalistic contract; this is integral to arguments made thus far in the thesis, that attempts to transform paternalism into a legal relation are thwarted as legality and the state itself, in its attempts to foster universalism, are plural and fragmented (see Chapter one, p. 54).

## **Addressing loopholes in ESTA**

At the particular moment that I was doing fieldwork, evictions were happening on a large scale, and the national housing problem being addressed through the Reconstruction and Development Programme (RDP), was not delivering municipal housing at the rate it had foreseen. The ESTA law, though in place to protect farm dwellers from eviction from their houses, was not working to protect most of them (aside from certain people classified as ‘permanent occupiers’) but was working against them, providing for legal evictions, and this meant that where many people were being evicted they had nowhere else to go but to relatives’ houses in townships and RDP developments. There they depended on family allowing them to build ‘wendy houses’ or extensions onto their own houses. In part, paralegals and the (SFP) project lawyers told me, this was because of a lack of awareness of rights among farm workers, and these activists attempted to educate farm workers (chapters five - eight). However, the loopholes in the bill, outlined in previous chapters, had been foreseen by these representatives as it became an act of parliament (see Chapters one, six and seven).

Lawyers and paralegals, despite past successes in case work with families threatened with eviction and some who were illegally evicted, were increasingly frustrated that so many farm workers were being evicted legally, because of the protection of farm owners’ property rights that ESTA and land reform more generally afforded. At this point, some of the cases that the lawyers on the project had litigated on in the past were seen as milestones, although they too were not without their problems. Despite these successes, many more families were being evicted, legally or illegally, and without approaching anyone for legal advice. And the milestones referred to above were limited in terms of service delivery on court decisions (see especially example of Mooi Plaas, chapter 4). Women in particular were being intimidated to move off the farm after the death of a male relation (the occupier), whereas the act stipulates that on the death of a family member who was a permanent occupier, the other members of the household must be given a minimum notice of one year to vacate the property. Such intimidation is evidence of part of the power that paternalism affords – it has been noted that some farmers ‘buy’ people’s ESTA rights by offering them a good deal less money than a settlement or court case might allow as an inducement

to leave immediately (Hall et al. 2001: 5) and that they are being prosecuted neither by police (who believe it to be a private matter and are not aware of the law), nor by magistrates (who, in rural areas, often socialise in the same circles as farm owners) (op. cit: 5-6). ESTA has no power to deal with evictions after the fact unless it is put into motion as an ‘urgent application’ at the moment of the illegal eviction – this is reliant on farm workers being aware that there is help available.

Knowing that access to housing was limited and took a long time, lawyers and paralegals aimed to maximise the dwindling potential of the law to provide new housing, but at the same time attempted to protect current housing as far as possible, because of their awareness of the long wait for (RDP) housing and the continued problems encountered with the Departments of Land Affairs and Housing in provision. They aimed to protect the right to security of tenure – in other words, they sought legal solutions to make sure that farm dwelling families might remain in their houses; aiming to reverse a massive trend of evictions on South African farms. In some cases, this was easy to achieve. Without even litigating, lawyers would send a letter to the farmer to explain that certain farm workers were automatically protected by the Act, and that any legal proceedings would be costly to the farm owner. As seen in chapter 6, lawyers could also negotiate out of court settlements with the farmer.

Over time, the ‘right to family life’ has become increasingly important as the loopholes of the Act have revealed themselves as acting against the interests of farm workers. The current rising awareness of legal help for evictees also means that eviction can be negotiated, but such awareness was piecemeal, and contingent on informal networks between farm workers and the continued advocacy of access to justice from civil society.

Below I consider a conversation I had with one of the lawyers on the Security of Farm workers’ project that I noted in my fieldnotes:

Kamal spoke very excitedly about the right to family life and its importance to the [Olive Grove] case. He also talked about how it is potentially important for other cases. It was the culture that he seemed most excited about, the fact that the ‘right to family life’ is in accordance with the culture of the family. He said ‘you have to start with the culture of coloured people. Whereas I left home at the age of 18, it is the culture



of these people that they will live with their family until they are married'. He seemed to be appealing to me as an anthropologist.

'They might have children who stay on the farm with their parents as grown ups, or return to the family home when they face difficulties. They bring money into that household and are necessary to the economic survival of the family in that house. This is their culture. This is what we need to use now. If some of our clients are in this position, and the farm could evict them, then this might be the only way to make sure they are protected from eviction'. He continued, 'This farmer is trying to evict grown up children, you see, but if there is an occupier, then occupiers have the right to have their grown up children live with them' (field notes June 2002).

Kamal's enthusiasm for this section stems from the particular situation of his clients. It also stems from precedents set in previous trials in which the organisation had litigated, one of which is described by Hall et al. in the following extract:

One landmark case stands out, in which a woman's independent right to tenure security on a farm was affirmed. Mary Hanekom, a permanent farm worker, was threatened with eviction after her husband was dismissed from his job. The farm owner applied for a court order to be able to evict the entire family, which was successfully opposed, largely through the intervention of Lawyers for Human Rights...

The court found that Mary's tenure was not contingent on her husband, and that her independent tenure rights must be upheld. Further, the court ruled that the right to family life meant that Mary had the right to live with her husband. The eviction order was denied, and both were able to continue living on the farm on the basis of her independent tenure rights (Hall et al. 2001: 8).

This precedent informed the lawyer above that the right to family life could be mobilised in other cases. Another precedent case regarding land tenure was the much discussed Grootboom case in which the precedent of the right to family life had originally been set. But he is also influenced by an understanding of coloured family 'culture', which he describes as economic inter-dependence, particularly until marriage. He had a point. As we have seen in chapters two to four, farm dwellers relied on family members. People would move back to their parents' houses on farms when they were having financial or marriage problems, or for help with childcare; conversely, the familiar networks of association between farm dwellers on farms were easily broken due to jealousies and protection granted to some over others, for instance (chapter two), though in chapter five I showed how these relationships could be strengthened and mobilised. The lawyer necessarily has to make conclusions such

as the one above in order to mobilise this section of the Act as cases become increasingly difficult to win. His discussion related to the Olive Grove Case (see chapter 6), in which an occupier had a chance to remain in his house, but the farm owner was attempting to evict his grown up son in order to reduce the size of the household and then potentially evict the family or move them to a smaller house. It was also being applied to another occupier in a different house who was being threatened with eviction because her husband, who had been a permanent occupier, had died. She had a right to remain in her house, but was now living with her father in law since her husband's death, and Kamal was attempting to manoeuvre the right to family life by arguing that she should be considered a permanent occupier as that was the status of her father in law (and had, incidentally, been the status of her deceased husband). Grown up sons or daughters and interdependency in a family had not been used yet in terms of the right to family life, and Kamal saw in this section a chance of some success for the case. If the lawyer could draw on cultural aspects of coloured people, which he perceived as being part of South African culture more widely, he might be successful in garnering the right of all the members of the family to stay in the house. His assumption about what coloured family life means is drawn from his prejudices and actual experiences of dealing with his clients. He can draw usefully upon the right to family life by describing an apparently culturally determined set of practices and on precedents previously set that can be more usefully activated in the context of litigation. These further inform his impressions of 'coloured' culture – the moral aspect to this small point of order being that a human right imbues it with a legitimising (not to mention moralistic) quality, an assumption based on stereotypes fixed by apartheid as well as practices produced by paternalism and reproduced by neo-paternalistic organisation of welfare programmes on farms. According to the lawyer, then, this right has the potential to set some of the parameters of family – and he clearly recognises the strength that cultural notions carry with them all the way into the court, as they have in other cases.

The failure of the law to protect most people, even those with access to justice, is also evident here. The right to family life, which was always in the law, has emerged as one of its strengths in the face of failure to protect mainly women, specifically if women have been evicted because their husband or partner has left them. However,

the reliance on the use of the right reproduces paternalistic notions that are themselves the result of past inequalities – a law is shaped by these inequalities as it attempts to drive them out, which I show below. Family may be renegotiated, then, through a law that addresses the tenure of housing on farms. Who is and who is not family becomes a relevant issue when the house and its members are seen through the eyes of this law in a particular case.

### **The culture problem in Law**

Whilst anthropologists were debating and critiquing ‘essentialising’ turns of anthropology towards the ideas of culture and identity, ‘they found themselves witnessing, often during fieldwork, the increasing prevalence of ‘culture’ as a rhetorical object – often in a highly essentialized form – in contemporary political talk’ (Cowan et al. 2001: 3). It is important, then, as Cowan et al. urge, to look at how the notion of ‘culture’ informs rights, and, indeed, how rights can be seen as culture.

The efficacy of the concepts of family life and culture to a legal case can be complicated, especially if one deals with different types of cases. For paralegals, this is abundantly clear – one told me that where most of his caseload is made up of eviction cases, he also dealt a lot with divorce and payment of maintenance following separation of parents.<sup>90</sup> It may be that paralegals deal with settlements of divorce, evictions and maintenance with the same family. When visiting one family on a farm, Walter, my assistant shifted his role to paralegal and visited a family who were adopting their grand child – he had promised to give them some legal advice on the correct ways of going about this and to give them contacts that they would need. The couple needed official recognition of their role with regard to the child’s care and guardianship in order to claim certain state benefits. Another family seeking assistance on the same farm for protection from eviction had unofficially adopted a neighbour’s child because they had been worried about his welfare and because they wanted to help their friend and neighbour at her own request (chapter two). This information, it seemed, would not be used in their claim to keep their house, and indeed they had not volunteered it when the lawyer from LHR came to meet them –

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<sup>90</sup> The process of dealing with the Maintenance Act, was a concern during paralegal training.

rather it was the status of the primary occupant (the man of the house) as disabled and unable to work (officially) that would secure this family's tenure. The right for the family to live there was automatically gained through this clause and it seemed it would not be contested by the farmer. There did, however, remain some doubt as to whether the farm owner would move them to a smaller house on the farm. The potential of this right to be evoked was present, but the possibility of this happening was vague.

The interpretation and application of this section of the Act by the lawyer in the example above leads me to question what 'according to the culture of the family' really means in the light of discussions of family life and evictions in the first part of this thesis and the introduction, respectively. First, I focus on how the lawyer understands culture of family life. The lawyer is working on the assumption that there exists a descriptive value of family culture that can be defined in terms of living arrangements, but ultimately it might be revalued in terms of wider relations on the farm. Next, I discuss what culture means in court, addressing an issue that has been addressed by legal anthropologists in the past. Third, coming back to the lawyers' understanding of culture I examine his broader take on the culture of the South African family. This raises questions of whether the culture of family life is a universal given in South Africa, or whether in fact culture has been mediated by social constructs imposed historically that are still embodied in society. Is this culture pan-South African or local? Can it be attributed to race or class? And where does it fit in with the quasi kin relations within the paternalist construct?

If, as I have argued in chapter three, paternalism on farms informs the family life of farm dwellers, then the culture of family life for these dwellers is embedded in paternalism, and the lawyer's assumption of the 'culture of that family' is embedded in his prior knowledge about farm workers' lives. Further, it will continue to be embedded in these relations of power and authority through paternalism if the right to family life proves successful in protecting farm dwellers' tenancy on these farms. Ultimately, this could mean that this right is instrumental in furthering relations of paternalism on farms, another unintended consequence of this law. Having suggested that the right to family life is legitimating paternalism, I also do not think that lines can be drawn that simply. Other questions must be asked about this right, for

example, should the notion of culture - a marker of difference that had been used to promote separate development (apartheid) - be in the Act at all?

In Kamal's case of the grown up son of an occupier being threatened with eviction, he aimed at arguing a dual relation of dependency in that household; not only was the grown up son depending on his father allowing him to return home, the father was also dependent on his son economically. The father's rights as permanent occupier allow him to continue living there, but when the grown up son moved in, the farmer issued an eviction, because for some reason he did not wish that young man to stay on the farm, and assumed that he would be able to find alternative accommodation for himself. But the relation of dependency is seen by Kamal as cutting both ways. The grown up son has a job, but his father is retired, so the family is depending upon the income of this son. There is nothing surprising about this particular dependency given how dependency in various forms is present in paternalism.

However, in a training session on ESTA, Kamal also referred to the right to family life, and referred to the culture of family life being universal in South Africa. He said that dependency is a part of the culture of family life in South Africa. What lines is he drawing between the culture of the coloured farm dwelling family and that of other families? It seems that his argument rests on both; that dependency is a particular feature of farm dwellers' family lives; and that this could be said of the South African family in general. If this is true, then what does the concept of culture offer the law in terms of difference, and why, if culture is a concept not easily ascertained, is the clause nested in the law at all?

As I pointed out above, culture is a problematic concept in law for anthropologists. In his account of the trial 'to determine whether the group calling itself the Mashpee tribe was indeed an Indian tribe' (1988: 277), James Clifford describes the cross-examination of anthropologists and other social scientists that aimed to establish a definition of the word culture:

This cornerstone of the anthropological discipline proved to be vulnerable under cross-examination. Culture appeared to have no essential features... It seemed to be a contingent mix of elements (1988: 323).

A definition of the word 'tribe' was also contested in the court, and Clifford describes this as the 'trial's most conspicuous "double bind". To sue for land the Mashpee must be a tribe; to be a tribe they must have land' (*ibid.*: 321). Cowan et al (2001: 3) argue that anthropologists should shift their critique and opposition to culture to an analysis of human rights as a 'cultural process', giving particular attention to the ways that 'culture' and rights inform each other, and to 'who benefits from this or that version of culture, tradition or community? (2001:21)'. They urge anthropologists and sociologists to ground such theoretical analyses and questions in empirical, local contexts.

In the discussion that I had with the lawyer regarding 'the right to family life according to the culture of that family' (ESTA 1997), I accepted his instrumental use of this right in that this seemed the most logical *legal* argument. But the lawyer also makes a clear assumption of what that 'culture' entails, particularly coloured culture, more specifically, farm worker culture. I had heard him speak of it before in terms of 'South African family' culture (see introduction), but I was more acutely aware of how he was using the concept as a legal device in relation to particular groups (farm workers) at particular times. The legal use of culture differs to the varying and contingent application of the concept that anthropologists use (which is also reminiscent of the "double vision" of lawyers and anthropologists that Randy Kandel refers to (1992)). What we can see in this law are 'powerful assumptions and categories underlying the commonsense' that support it (Clifford 1988: 337); these assumptions, in the case of the right to family life, also support the notions that underpinned the apartheid vision of culture. Apartheid notions of culture through legal means created paternalism through their racially hierarchical formulation of cultural typologies. Whether or not 'children stay in the house until they get married' is an assumption about what coloured culture entails, and the concept itself becomes rigid, as informed by apartheid, and does not allow for individual agency. More specifically, it is informed by paternalism. But grown up children do not only stay with the family, they return after they are married, they send their own children to their parents in times of trouble (see chapters two and four).

Sally Engle Merry also examines official doctrines on culture in relation to women. In a recent article she argues that culture has become a motif for which a multitude of

sins can be blamed. In addressing subjugation of women and domestic violence, the UN's 'blaming culture for the disadvantages faced by women, minorities and other vulnerable groups is an appealing ideology for proponents of contemporary neo-liberal globalisation' (2003: 64). The role of women and children is that of dependants, but the notion of rights is individualistic, and therefore the 'right to family life' is understood in this context as the right to reside in the same house as one's family, the rights of those other than the 'occupier': it cannot be taken any further than this – it is simply a means to an end. For women and children, it implies a creation of a picture or view of what family life is according the culture of that family. It therefore entails speaking about the 'identity' of a particular community at a particular time. Indeed, as Jensen argues, there are continuations in post-apartheid techniques of government with the apartheid government's, arguing:

As had the old, so did the new government evoke notions of community.  
As had the old, so did the new government objectify communities, as  
sites of governmental intervention (2004: 187).

In the rural Western Cape, and in South Africa more generally, rapid change and urbanisation is being challenged by a fixed notion of what families do in difficult circumstances, for example, when they are threatened with eviction.

The problem is, if one takes the culture of families as a given, one might even say that domestic violence is part of that culture, for it has been afforded more legitimacy in the context of paternalism, but this would also be to argue that culture is to blame when we know that culture is not a fixed concept. It is compelling to note where the concept of culture becomes fixed in the context of law, and what future consequences of its use might be.

I am suggesting that this presents a possibly dangerous precedent, not because there is no culture of family life on farms, but because the culture of family life is inscribed in paternalism, and seems to be fixed if law does not challenge it effectively. If the culture of family is to be lauded, must we accept that domestic violence or domestic governance are fixed traits of that culture? Clearly this should not be the case, and this culture would simultaneously be unconstitutional, the same constitution also protects the right of every South African individual from physical violence to their person, to equality, from intimidation. But protections afforded by

rights are up against protections afforded by the quasi-legal sphere of farm paternalism. This is ultimately a legal paradox that is already being realised in fact, as couples in violent relationships certainly wish to have their tenure rights protected (see chapter two).

Thus far in this concluding chapter, I have discussed the potential and actual implications of the right to family life clause nested in ESTA, and have looked at the way that the notion of culture, contained in this clause, has been understood in relation to actual cases. I turned to legal anthropology, which casts doubts on the efficacy of anthropological notions of culture in law (Clifford 1988), but then turned my attention to how anthropologists might instead focus on the mutual engagement of the culture concept with human rights (Cowan et al. 2001).

A simple conclusion that can be drawn from all of this is that where farm dwellers' legal rights to tenure are protected by this law, paternalism, as a distinct set of rules *and* relations, retains its grip on farm life, but it perhaps changes the relation between farm workers and farmers. However, these relations are unstable anyway, as tensions build from increased evictions, something that this, and other laws' existence, have indeed partly caused. Those that remain on farms are increasingly insecure, as paternalism offers them less and less protection, and as ESTA offers them little security. Social problems and poverty have increased because of this state of affairs, and where farm workers have claimed rights through courts, the lack of delivery by the state means that farm workers with access to justice have only varying success with dealing with the law. Below I consider relations in the examples that I provided in the introduction, and I examine them in the light of this argument, and the arguments made in the thesis thus far.

### **Evictions on Farms: Revisited**

In the introduction, I showed how paternalism has prevented Beauty and her family from staying on the farm, as the farmer used his authority to evict and cut ties with this family after the male permanent occupier, Beauty's father Dennis, died. Had they had access to the law, their tenure might have been more secure, but at some point this farmer would have likely planned to evict them when he could see an opportunity. He therefore capitalised on the lack of legal knowledge of his farm



workers to evict them for a far smaller amount of money than it would have cost to evict them by law. Such communication, and manipulation, is characteristic of paternalism, and the farmer uses it to cut the relational ties with farm workers.

In the case of Pynfontein Plaas, the tacit agreement had been for farm workers to stay in their houses after the farmer had sold the farm following liquidation. The people of the land became the responsibility of the local state, when the land was transferred to the South African Roads Authority. The municipality then violently evicted the farmworkers, who were protected by ESTA. The local state was ordered to provide housing. The 'word' of the farmer that farm workers could stay in their houses was not part of the deal that the state had agreed to, but their violent eviction of farm workers was testament to the value of farm workers' lives for the local state. In addressing this, LHR and the paralegal use rights language to claim entitlement to justice, by drawing on the constitutional right to dignity. In addition, we see that other legal issues are entwined with addressing ESTA.

And finally, in Nikki du Vries' case, his security of tenure is protected by the law because he is defined by it as a permanent occupier. When his electricity was cut off, however, Nikki did not relate this to the rights he had in terms of the Act, and even when these were explained to him, the matter was experienced purely from the point of view of relations between him and the farm as the farm family. The Act itself was taken personally, and the recourse to the law did not, for Nikki, offer sufficient redress.

In each example, plural modes of legality are at play. Paternalism itself has been preceded on historical relations with little interference from the apartheid state aside from racialised labour policies (Meer 1997; du Toit 1996, 1993). Paternalism itself involves certain rules and norms, yet it has always been subject to change, not fixed (Orton et al 2001) as was discussed in chapter 1. It has never been a secure way of operating, but though its grip is still strong in sociality on farms, farm workers are increasingly insecure, as shown in chapters two to four. The operation of family like structures inherent in paternalism on the farm only serve to entrench tensions (chapters two-four). These tensions have been exacerbated by the existence of laws apparently in place to protect farm workers, though farmers find that they can still

evict most farm workers, either through ESTA, or through their relations with farm workers, or sometimes with a mix of these, as in the case of Beauty Saunders and her family and of Nikki du Vries and his (above). Neo-paternalism, in Orton et al's (2001: 474) description of its present manifestation, is simultaneously operating and being challenged on farms in the Western Cape, but it is activities of civil society working in new ways that made real attempts to challenge paternalism by drawing on some of its perhaps more positive features (Chapter five).

Farm workers feel a loss of their sense of family on the farm when the farmer does this (Kritzinger et al. 2004: 34), as they have always thought of arguments with farmers as having the potential to sever that relation, usually to the detriment of farm workers' security (Chapters three and four). Women particularly are insecure on farms, and their experiences of domestic violence adds to these tensions (Chapter three). Because laws protecting women from domestic violence are difficult to access, they continue to suffer, in terms of security of the body, of their security of tenure, and their financial security. Women rarely get access to justice, given their lower and doubly subjugated positions in farm paternalism. Even when they do, as exemplified in the Pynfontein example (Introduction), illiteracy can cause further problems of its own for them. A woman attempting to file an injunction against her violent partner then had trouble understanding the complicated jargon of the forms she was obliged to fill in, and nobody was on hand to help her. Women farm workers continue to depend on family, which places them in insecure positions as well, and on the farmer, if they continue to live on farms, as shown in chapters two and three. However, life off farms is also insecure, and farm workers often prefer to accept the now limited protection inscribed in paternalism, but are still subject to the farmers' authority, as described in chapter two.

Though there may exist laws aimed at protecting human rights, and at addressing past inequalities, because of the state's failure to engage with these laws effectively and to provide in terms of socio-economic rights, farm workers are seen as marginal to the state (Greenberg 2001; Rutherford 2001), and this helps to explain why farm workers continue to accept conditions associated with paternalism, but become further deprived of income and security, further marginalising them from the state's delivery of services (SAHRC 2004). All of this is described through the first part of

the thesis, in ethnographies that analysed farm workers' life histories and their contemporary experiences of different forms of legality, and by analysing in the light of other literature that focus on farm relations (Ahmed et al. 2003<sup>91</sup>); their history (Du Toit 1996, 1993<sup>92</sup>); land reform (Ahmed et al 2003<sup>93</sup>) social problems (Barrientos et al 2003<sup>94</sup>); access by farm workers to state services (Ewert and du Toit 2005; du Toit 2003, 2002,1996a) and law (NCBPA website; Pillay 2002 a & b; Sloth-Nielson 2003; as above for land reform); and, women on farms (Hall 2001<sup>95</sup>).

As a reflection of the blurring of boundaries inherent in marginalisation (Rutherford 2001), and as a pivot between two different views of the situation, chapter five was a bridge between part I, which essentially described the metaphor and effects of paternalism, and part II, which examined how the plurality of laws, state fail farm workers and how legal actors represent them. Chapter five, then, was concerned with the manner of testimony being used (Coutin 1994) and the 'moral community' (Jensen 2004; also van Beek 1999) alluded to therein. I showed that testifying to marginality, drawing on the existing family like societal organisation on farms, and mobilising human rights (James 2000a) an NGO could organize in the manner of unions, where unions had essentially failed.

Part II, then, turned the gaze towards ESTA, its implementation, and the various legal forms at work in farm workers' lives. Chapter six focussed more closely on the failures of ESTA, and how LHR's Security of Farm workers' project (SFP) attempts to both address these and to provide farm workers with as much awareness of their labour rights as possible. Paralegals dealt at a much more local level, and over the years had had much more direct contact with farmers, workers and state agencies, in attempting to address farm workers' socio-economic rights through law. The

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<sup>91</sup> See also, Barrientos et al. 2003; du Toit. 2005, 2003, 2002, 1999, 1998, 1998, 1996, 1993; du Toit and Ewert 2005; du Toit and Moosa 1999; Ewert and du Toit 2005a; Ewert and Hamman 1996; Hall 2003, 2001; Hall et al. 2003; Hall et al. 2001; Hall and Williams 2002a; Orton et al. 2001; Kritzinger et al. 2004; James 2000a & b; James and Ncgobo; Cousins et al.; Lahiff and Cousins; Rutherford 2001; Sylvain 2001; Ashley et al. 2003

<sup>92</sup> See also, de Klerk 1991; Ross 1983; van Onselen 1997, 1996; Scully 1997.

<sup>93</sup> See also, Barrientos et al.; Classens 2005; Cousins 2005; Hall 2003, 1998; Hall et al. 2003; Hall et al. 2001; Hall and Williams 2002 a,b & c; Hill-Lanz and O'Grady 1997; James 2000a & b; Karuiki 2004 a & b; de Klerk 1991; Lipton 1996; du Toit 2002, 2000, 1996 b, 1999, 1998; Williams 2005.

<sup>94</sup> See also, Ewert and du Toit 2005; Hall 2001, 2003; Kritzinger et al 2004; London 1999; du Toit 1993; du Toit and Moosa 1999.

<sup>95</sup> See also, Claassens 2005; Hill-Lanz and O'Grady 1997; Kritzinger et al. 2004; Meer 1997; Orton et al. 2001.

argument therein showed that paralegals were traversing across various margins, and were liminal figures in terms of the transition to democracy and a culture based on rights (Wilson 2001; Turner 1987). They drew on their identification with farm workers and their positions within ‘communities’ to draw further legitimisation of this liminal position (Jensen 2004), as their identification with the rural poor meant that they were activists as well as advisors.

Drawing again on the concepts of liminality (Turner 1987), but also on also on Tambiah’s analysis perlocutionary speech acts (1981), chapter eight showed the purposes of the performances displayed by the HRC in their inquiry into human rights violations in farming communities. Drawing on the power of such a motif for promoting rights culture, I argued that the HRC to some extent could be compared with the more media dramatic SATRC. Analysing anthropological accounts of this, I was able to analyse the positions of the two commissions at the beginning and at the end, respectively, of the transition to democracy, and to look at their roles in state making. Again, paralegals are key to understanding the dynamics of the HRC public hearing, as they operate along the performative, quasi-legal lines of the hearing, whilst farmers, farm workers, and the state took up roles familiar with their narratives in paternalist practice.

Moments of eviction, as they have been described in this thesis, and their contexts, describe the nature and extent of law’s protection, and the plurality of legal forms at work during the so-called transition to democracy. Paternalist relations are not becoming legal ones, but this thesis has shown the various conditions of betweenness, or marginality, when evictions are challenged.

A key focus of the thesis has been to examine the effectiveness of ESTA, and human rights, in addressing problems associated with paternalism. ESTA was written to address increasing evictions from farms, but it caused more evictions and failed to have a big impact on this trend other than to continue it. Security, then, at the centre of this law, has not been guaranteed at all, as farm workers appear to be even more insecure than ever. Post-apartheid South Africa has attempted to forge a new nation state that not only diverged from all practices associated with its predecessor, the apartheid state, but which was to be based on a brand new constitution with a

comprehensive bill of rights. Meanwhile, a plurality exists that attempts to cut across the divisions of the past, but fail to because the plural legal context makes law and services inaccessible for farm workers.

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**Appendix****REPUBLIC OF SOUTH AFRICA****EXTENSION OF SECURITY OF  
TENURE ACT****REPUBLIEK VAN SUID-AFRIKA****WET OP DIE UITBREIDING VAN  
SEKERHEID VAN VERBLYFREG  
No , 1997****GENERAL EXPLANATORY NOTE:**

Words underlined with a solid line indicate insertions in existing enactments.

**ACT**

**To provide for measures with State assistance to facilitate long-term security of land tenure; to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated; and to regulate the conditions and circumstances under which persons, whose right of residence has been terminated, may be evicted from land; and to provide for matters connected therewith.**

**WHEREAS** many South Africans do not have secure tenure of their homes and the land which they use and are therefore vulnerable to unfair eviction;

**WHEREAS** unfair evictions lead to great hardship, conflict and social instability;

**WHEREAS** this situation is in part the result of past discriminatory laws and practices;

**AND WHEREAS** it is desirable—

that the law should promote the achievement of long-term security of tenure for occupiers of land, where possible through the joint efforts of occupiers, land owners, and government bodies;

that the law should extend the rights of occupiers, while giving due recognition to the rights, duties and legitimate interests of owners;

that the law should regulate the eviction of vulnerable occupiers from land in a fair manner, while recognising the right of land owners to apply to court for an eviction order in appropriate circumstances;

to ensure that occupiers are not further prejudiced;

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

**CHAPTER 1****Introductory provisions****Definitions**

**1.** (1) In this Act, unless the context indicates otherwise—

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(i) “consent” means express or tacit consent of the owner or person in charge of the land in question, and in relation to a proposed termination of the right of residence or eviction by a holder of mineral rights, includes the express or tacit consent of such holder; (xvii)

(ii) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (viii)

(iii) “court” means a competent court having jurisdiction in terms of this Act; (x)

(iv) “Director-General” means the Director-General of the Department of Land



Affairs or an officer of that Department who has been designated by the said Director-General either generally or in respect of a particular case, or in respect of cases of a particular nature; (iv)

(v) “employee” means an employee in terms of the Labour Relations Act; (xx)

(vi) “evict” means to deprive a person against his or her will of residence on land or the use of land or access to water which is linked to a right of residence in terms of this Act, and “eviction” has a corresponding meaning; (xviii)

(vii) “Land Claims Court” means the court established by section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); (vii)

(viii) “Minister” means the Minister responsible for Land Affairs or an officer of the Department of Land Affairs who has been designated by the Minister either generally or in respect of a particular case, or in respect of cases of a particular nature: Provided that the powers referred to in section 28 shall be excluded from any such designation; (xi)

(ix) “municipality” means a municipality in terms of section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993); (xii)

(x) “occupier” means a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding—

(a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); and

(b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and

(c) a person who has an income in excess of the prescribed amount; (xiii)

(xi) “off-site development” means a development which provides the occupants thereof with an independent tenure right on land owned by someone other than the owner of the land on which they resided immediately prior to such development; (ii)

(xii) “on-site development” means a development which provides the occupants thereof with an independent tenure right on land on which they reside or previously resided; (xiv)

(xiii) “owner” means the owner of the land at the time of the relevant act, omission or conduct, and includes, in relation to the proposed termination of a right of residence by a holder of mineral rights, such holder in so far as such holder is by law entitled to grant or terminate a right of residence or any associated rights in respect of such land, or to evict a person occupying such land; (v)

(xiv) “person in charge” means a person who at the time of the relevant act, omission or conduct had or has legal authority to give consent to a person to reside on the land in question; (xv)

(xv) “prescribed” means prescribed by regulation; (xix)

(xvi) “regulation” means a regulation made under this Act; (xvi)

(xvii) “suitable alternative accommodation” means alternative accommodation which is safe and overall not less favourable than the occupiers’ previous situation, having regard to the residential accommodation and land for agricultural use available to them prior to eviction, and suitable having regard to—

(a) the reasonable needs and requirements of all of the occupiers in the household in question for residential accommodation, land for agricultural use, and services;

(b) their joint earning abilities; and

(c) the need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active; (vi)

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(xviii) “terminate” includes to withdraw consent to a person to occupy or use land;

(i)

(xix) “the Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995); (iii)

(xx) “this Act” includes the regulations. (ix)

(2) In respect of unalienated State land, unsurveyed State land, or land registered in the name of the State or an institution or functionary exercising powers on behalf of the State—

(a) “owner or person in charge” includes a person who has been certified by the Director-General, on application made in the prescribed manner, to be the owner or person in charge, subject to the conditions that the Director-General may determine; and

(b) a certificate purporting to have been issued by the Director-General in terms of paragraph (a) shall constitute *prima facie* evidence of the authority of the person named in it to act as owner or person in charge of the land concerned, and shall be admissible in evidence on its production in a court.

#### **Application and implementation of Act**

2. (1) Subject to the provisions of section 4, this Act shall apply to all land other than land in a township established, approved, proclaimed or otherwise recognised as such in terms of any law, or encircled by such a township or townships, but including—

(a) any land within such a township which has been designated for agricultural purposes in terms of any law; and

(b) any land within such a township which has been established, approved, proclaimed or otherwise recognised after 4 February 1997, in respect only of a person who was an occupier immediately prior to such establishment, approval, proclamation or recognition.

(2) Land in issue in any civil proceedings in terms of this Act shall be presumed to fall within the scope of the Act unless the contrary is proved.

(3) The Minister may, from moneys appropriated by Parliament for that purpose and subject to such conditions as he or she may determine, make funds available to another person, body or institution which he or she has recognised for that purpose, to promote the implementation of the rights conferred by this Act.

#### **Consent to reside on land**

3. (1) Consent to an occupier to reside on or use land shall only be terminated in accordance with the provisions of section 8.

(2) If a person who resided on or used land on 4 February 1997 previously did so with consent, and such consent was lawfully withdrawn prior to that date—

(a) that person shall be deemed to be an occupier, provided that he or she has resided continuously on that land since consent was withdrawn; and

(b) the withdrawal of consent shall be deemed to be a valid termination of the right of residence in terms of section 8, provided that it was just and equitable, having regard to the provisions of section 8.

(3) For the purposes of this Act, consent to a person to reside on land shall be effective regardless of whether the occupier, owner or person in charge has to obtain some other official authority required by law for such residence.

(4) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of one year shall be presumed to have consent unless the contrary is proved.

(5) For the purposes of civil proceedings in terms of this Act, a person who has

continuously and openly resided on land for a period of three years shall be deemed to have done so with the knowledge of the owner or person in charge.

(6) The provisions of subsections (4) and (5) shall not be applicable to any land held by or registered in the name of the State or an institution or functionary exercising powers on behalf of the State.

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## **CHAPTER II**

### **Measures to facilitate long-term security of tenure for occupiers**

#### **Subsidies**

4. (1) The Minister shall, from moneys appropriated by Parliament for that purpose and subject to the conditions the Minister may prescribe in general or determine in a particular case, grant subsidies—

(a) to facilitate the planning and implementation of on-site and off-site developments;

(b) to enable occupiers, former occupiers and other persons who need long-term security of tenure to acquire land or rights in land; and

(c) for the development of land occupied or to be occupied in terms of on-site or off-site developments.

(2) In deciding whether to approve an application for a subsidy, and if so, the priority to be given to that application, the Minister shall have regard to the extent to which an application complies with the following criteria:

(a) The development entails a mutual accommodation of the interests of occupiers and owners;

(b) the development is cost-effective;

(c) in the case of an off-site development under circumstances where the occupiers have indicated that they would prefer an on-site development, satisfactory reasons have been provided why an on-site development would not be a more appropriate solution;

(d) owners and occupiers have made a reasonable attempt to devise a development which complies with the criteria contemplated in paragraphs (a) and (b);

(e) the occupiers are the spouses or dependants of persons contemplated in section 8(4)(a); and

(f) there is an urgent need for the development because occupiers have been evicted or are about to be evicted:

Provided that where an application is made by or on behalf of occupiers for an off-site development, such an application shall not be prejudiced by reason only of the absence of support from an owner who is not the owner of the land on which the development is to take place.

(3) Where the persons who are intended to benefit from a development have been identified, a subsidy shall not be granted unless the Minister has been satisfied that the development is acceptable to a majority of the adults concerned.

(4) The Minister may, for the purposes of this section, grant subsidies through an agreement with a provincial government or a municipality, or a person or body which he or she has recognised for that purpose, where—

(a) a provincial government or a municipality or such person or body will facilitate, implement or undertake or contract with a third party for the facilitation, implementation or undertaking of a development; or

(b) the subsidy is paid to the provincial or local government or such person or

body to enable it to facilitate, implement or undertake or contract with a third party for the facilitation, implementation or undertaking of a development.

(5) No transfer duty shall be payable in respect of any transaction for the acquisition of land in terms of this section or in respect of any transaction for the acquisition of land which is financed by a subsidy in terms of this section.

(6) A potential beneficiary of a development may apply for a housing subsidy as provided for in terms of sections 10A, 10B, 10C and 10D of the Housing Act, 1966 (Act No. 4 of 1966).

(7) The provisions of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), shall not apply to land on which a development is undertaken in terms of this Act.

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### **CHAPTER III**

#### **Rights and duties of occupiers and owners**

##### **Fundamental rights**

**5.** Subject to limitations which are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, an occupier, an owner and a person in charge shall have the right to—

(a) human dignity;

(b) freedom and security of the person;

(c) privacy;

(d) freedom of religion, belief and opinion and of expression;

(e) freedom of association; and

(f) freedom of movement,

with due regard to the objects of the Constitution and this Act.

##### **Rights and duties of occupier**

**6.** (1) Subject to the provisions of this Act, an occupier shall have the right to reside on and use the land on which he or she resided and which he or she used on or after 4 February 1997, and to have access to such services as had been agreed upon with the owner or person in charge, whether expressly or tacitly.

(2) Without prejudice to the generality of the provisions of section 5 and subsection

(1), and balanced with the rights of the owner or person in charge, an occupier shall have the right—

(a) to security of tenure;

(b) to receive *bona fide* visitors at reasonable times and for reasonable periods:

Provided that—

(i) the owner or person in charge may impose reasonable conditions that are normally applicable to visitors entering such land in order to safeguard life or property or to prevent the undue disruption of work on the land; and

(ii) the occupier shall be liable for any act, omission or conduct of any of his or her visitors causing damage to others while such a visitor is on the land if the occupier, by taking reasonable steps, could have prevented such damage;

(c) to receive postal or other communication;

(d) to family life in accordance with the culture of that family: Provided that this right shall not apply in respect of single sex accommodation provided in hostels erected before 4 February 1997;

(e) not to be denied or deprived of access to water; and

(f) not to be denied or deprived of access to educational or health services.

(3) An occupier may not—

(a) intentionally and unlawfully harm any other person occupying the land;

(b) intentionally and unlawfully cause material damage to the property of the owner or person in charge;

(c) engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity; or

(d) enable or assist unauthorised persons to establish new dwellings on the land in question.

(4) Any person shall have the right to visit and maintain his or her family graves on land which belongs to another person, subject to any reasonable condition imposed by the owner or person in charge of such land in order to safeguard life or property or to prevent the undue disruption of work on the land.

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#### **Rights and duties of owner**

7. (1) The owner or person in charge of land may have a trespassing animal usually or actually in the care of an occupier impounded and removed to a pound in accordance with the provisions of any applicable law, if the owner or person in charge has given the occupier at least 72 hours' notice to remove the animal from the place where it is trespassing and the occupier has failed to do so: Provided that the owner or person in charge may take reasonable steps to prevent the animal from causing damage during those 72 hours.

(2) An owner or person in charge may not prejudice an occupier if one of the reasons for the prejudice is the past, present or anticipated exercise of any legal right.

(3) If it is proved in any proceedings in terms of subsection (2), that the effect of the conduct complained of is to prejudice an occupier as set out in that subsection, it shall be presumed, unless the contrary is proved, that such prejudice was caused for one of the reasons referred to in subsection (2).

#### **CHAPTER IV**

#### **Termination of right of residence and eviction**

##### **Termination of right of residence**

8. (1) Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such termination is just and equitable, having regard to all relevant factors and in particular to—

(a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;

(b) the conduct of the parties giving rise to the termination;

(c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;

(d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and

(e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.

(2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the

occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.

(3) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act.

(4) The right of residence of an occupier who has resided on the land in question or any other land belonging to the owner for 10 years and—

(a) has reached the age of 60 years; or

(b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge,

may not be terminated unless that occupier has committed a breach contemplated in section 10(1)(a), (b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.

(5) On the death of an occupier contemplated in subsection (4), the right of residence of an occupier who was his or her spouse or dependant may be terminated only on 12 calendar months' written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10(1).

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(6) Any termination of the right of residence of an occupier to prevent the occupier from acquiring rights in terms of this section, shall be void.

(7) If an occupier's right to residence has been terminated in terms of this section, or the occupier is a person who has a right of residence in terms of section 8(5)—

(a) the occupier and the owner or person in charge may agree that the terms and conditions under which the occupier resided on the land prior to such termination shall apply to any period between the date of termination and the date of the eviction of the occupier; or

(b) the owner or person in charge may institute proceedings in a court for a determination of reasonable terms and conditions of further residence, having regard to the income of all the occupiers in the household.

#### **Limitation on eviction**

**9.** (1) Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act.

(2) A court may make an order for the eviction of an occupier if—

(a) the occupier's right of residence has been terminated in terms of section 8;

(b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;

(c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and

(d) the owner or person in charge has, after the termination of the right of residence, given—

(i) the occupier;

(ii) the municipality in whose area of jurisdiction the land in question is situated; and

(iii) the head of the relevant provincial office of the Department of Land Affairs, for information purposes,

not less than two calendar months' written notice of the intention to obtain an

order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Land Affairs not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with.

**Order for eviction of person who was occupier on 4 February 1997**

**10.** (1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if—

(a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;

(b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar month's notice in writing to do so;

(c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship; or

(d) the occupier—

(i) is or was an employee whose right of residence arises solely from that employment; and

(ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act.

(2) Subject to the provisions of subsection (3), if none of the circumstances referred

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to in subsection (1) applies, a court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.

(3) If—

(a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;

(b) the owner or person in charge provided the dwelling occupied by the occupier; and

(c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge, a court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to—

(i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and

(ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.

**Order for eviction of person who becomes occupier after 4 February 1997**

**11.** (1) If it was an express, material and fair term of the consent granted to an occupier to reside on land, that the consent would terminate upon a fixed or determinable date, a court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.

(2) In circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.

(3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to—

(a) the period that the occupier has resided on the land in question;

(b) the fairness of the terms of any agreement between the parties;

(c) whether suitable alternative accommodation is available to the occupier;

(d) the reason for the proposed eviction;

(e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.



### **Further provisions regarding eviction**

**12.** (1) A court that orders the eviction of an occupier shall—

(a) determine a just and equitable date on which the occupier shall vacate the land; and

(b) determine the date on which an eviction order may be carried out if the occupier has not vacated the land on the date contemplated in paragraph (a).

(2) In determining a just and equitable date the court shall have regard to all relevant factors, including—

(a) the fairness of the terms of any agreement between the parties;

(b) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land; and

(c) the period that the occupier has resided on the land in question.

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(3) A court may, at the request of the sheriff in question, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal, subject to the conditions determined by the court as to the execution thereof: Provided that the sheriff shall at all times be present during such eviction, demolition or removal.

(4) Any order for the eviction of an occupier in terms of section 10 or 11 shall be subject to reasonable terms and conditions for further residence which may be determined by the court, having regard to the income of all of the occupiers in the household.

(5) A court may, on good cause shown, vary any term or condition of an order for eviction made by it.

(6) Notwithstanding the provisions of sections 10 and 11, the court shall not order the eviction of an occupier if it is of the opinion that one of the purposes of such intended eviction is to prevent the occupier from acquiring rights in terms of section 8(4).

### **Effect of order for eviction**

**13.** (1) If a court makes an order for eviction in terms of this Act—

(a) the court shall order the owner or person in charge to pay compensation for structures erected and improvements made by the occupier and any standing crops planted by the occupier, to the extent that it is just and equitable with due regard to all relevant factors, including whether—

(i) the improvements were made or the crops planted with the consent of the owner or person in charge;

(ii) the improvements were necessary or useful to the occupier; and

(iii) a written agreement between the occupier and the owner or person in charge, entered into prior to the making of improvements, provides that the occupier shall not be entitled to compensation for improvements identified in that agreement;

(b) the court shall order the owner or person in charge to pay any outstanding wages and related amounts that are due in terms of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983) the Labour Relations Act or a determination made in terms of the Wage Act, 1957 (Act No. 5 of 1957); and

(c) the court may order the owner or person in charge to grant the occupier a fair opportunity to—

(i) demolish any structures and improvements erected or made by the occupier and his or her predecessors, and to remove materials so salvaged; and

- (ii) tend standing crops to which he or she is entitled until they are ready for harvesting, and then to harvest and remove them.
- (2) The compensation contemplated in subsection (1) shall be determined by the court as being just and equitable, taking into account—
  - (a) the cost to the occupier of replacing such structures and improvements in the condition in which they were before the eviction;
  - (b) the value of materials which the occupier may remove;
  - (c) whether any materials referred to in paragraph (b) or contributions by the owner or person in charge were provided as part of the benefits provided to the occupier or his or her predecessors in return for any consideration; and
  - (d) if the occupier has not been given the opportunity to remove a crop, the value of the crop less the value of any contribution by the owner or person in charge to the planting and maintenance of the crop.
- (3) No order for eviction made in terms of section 10 or 11 may be executed before the owner or person in charge has paid the compensation which is due in terms of subsection (1): Provided that a court may grant leave for eviction subject to satisfactory guarantees for such payment.

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#### **Restoration of residence and use of land and payment of damages**

- 14.** (1) A person who has been evicted contrary to the provisions of this Act may institute proceedings in a court for an order in terms of subsection (3).
- (2) A person who—
  - (a) would have had a right to reside on land in terms of section 6 if the provisions of this Act had been in force on 4 February 1997; and
  - (b) was evicted for any reason or by any process between 4 February 1997 and the commencement of this Act,
 may institute proceedings in a court for an order in terms of subsection (3).
- (3) In proceedings in terms of subsection (1) or (2) the court may, subject to the conditions that it may impose, make an order—
  - (a) for the restoration of residence on and use of land by the person concerned, on such terms as it deems just;
  - (b) for the repair, reconstruction or replacement of any building, structure, installation or thing that was peacefully occupied or used by the person immediately prior to his or her eviction, in so far as it was damaged, demolished or destroyed during or after such eviction;
  - (c) for the restoration of any services to which the person had a right in terms of section 6;
  - (d) for the payment of compensation contemplated in section 13;
  - (e) for the payment of damages, including but not limited to damages for suffering or inconvenience caused by the eviction; and
  - (f) for costs.
- (4) Where the person contemplated in subsection (2) was evicted in terms of an order of a court—
  - (a) the proceedings contemplated in subsection (1) shall be instituted within one year of the commencement of this Act; and
  - (b) the court shall in addition to any other factor which it deems just and equitable, take into account—
    - (i) whether the order of eviction would have been granted if the

proceedings had been instituted after the commencement of this Act;  
and

(ii) whether the person ordered to be evicted was effectively represented in those proceedings, either by himself or herself or by another person.

#### **Urgent proceedings for eviction**

**15.** Notwithstanding any other provision of this Act, the owner or person in charge may make urgent application for the removal of any occupier from land pending the outcome of proceedings for a final order, and the court may grant an order for the removal of that occupier if it is satisfied that—

(a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land;

(b) there is no other effective remedy available;

(c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship to the occupier against whom the order is sought, if an order for removal is granted; and

(d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted.

### **CHAPTER V**

#### **Dispute resolution and courts**

##### **Pending proceedings**

**16.** The provisions of sections 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15 shall apply to proceedings for eviction pending in any court at the commencement of this Act.

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##### **Choice of court**

**17.** (1) A party may, subject to the provisions of sections 19 and 20, institute proceedings in the magistrate's court within whose area of jurisdiction the land in question is situate, or the Land Claims Court.

(2) If all the parties to proceedings consent thereto, proceedings may be instituted in any division of the High Court within whose area of jurisdiction the land in question is situate.

(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), may make rules to govern the procedure in the High Court and the magistrates' courts in terms of this Act.

(4) Until such time as rules of court for the magistrates' courts are made in terms of subsection (3), the rules of procedure applicable in civil actions and applications in a High Court shall apply *mutatis mutandis* in respect of any proceedings in a magistrate's court in terms of this Act.

##### **Powers of court**

**18.** A court may, in addition to other powers set out in this Act—

(a) direct how the order of the court shall be executed, including the setting of time limits for the implementation of such orders; and

(b) make such orders for costs as it deems just.

##### **Magistrates' courts**

**19.** (1) A magistrate's court—

(a) shall have jurisdiction in respect of—

(i) proceedings for eviction or reinstatement; and

(ii) criminal proceedings in terms of this Act; and

(b) shall be competent—

- (i) to grant interdicts in terms of this Act; and
- (ii) to issue declaratory orders as to the rights of a party in terms of this Act.

(2) Civil appeals from magistrates' courts in terms of this Act shall lie to the Land Claims Court.

(3) Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before 31 December 1999, shall be subject to automatic review by the Land Claims Court, which may—

- (a) confirm such order in whole or in part;
- (b) set aside such order in whole or in part;
- (c) substitute such order in whole or in part; or
- (d) remit the case to the magistrate's court with directions to deal with any matter in such manner as the Land Claims Court may think fit:

Provided that before the Court makes any order in terms of paragraph (b) or (c), it shall give the parties an opportunity to make written submissions, and may give the parties an opportunity to make oral submissions, in that regard.

(4) The provisions of subsection (3) shall not apply to a case in which an appeal has been noted by an occupier.

#### **Land Claims Court**

**20.** (1) The Land Claims Court shall have jurisdiction in terms of this Act throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions in terms of this Act, including the power—

- (a) to decide any constitutional matter in relation to this Act;
- (b) to grant interlocutory orders, declaratory orders and interdicts;
- (c) to review an act, omission or decision of any functionary acting or purporting to act in terms of this Act; and

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(d) to review an arbitration award in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), in so far as it deals with any matter that may be heard by a court in terms of this Act.

(2) Subject to the provisions of section 17(2), the Land Claims Court shall have the powers set out in subsection (1) to the exclusion of any court contemplated in section 166(c), (d) or (e) of the Constitution.

(3) If in any proceedings in a High Court at the date of commencement of this Act that court is required to interpret this Act, that Court shall stop the proceedings if no oral evidence has been led and refer the matter to the Land Claims Court.

(4) The President of the Land Claims Court may make rules to govern the procedure in the Land Claims Court in terms of this Act.

#### **Mediation**

**21.** (1) A party may request the Director-General to appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act.

(2) The Director-General may, on the conditions that he or she may determine, appoint a person referred to in subsection (1): Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on the conditions that the Director-General may determine.

(3) A person appointed in terms of subsection (1) who is not in the full-time service of the State may, from moneys appropriated by Parliament for that purpose, be paid such

remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance for services performed by him or her.

(4) All discussions, disclosures and submissions which take place or are made during the mediation process shall be privileged, unless the parties agree to the contrary.

#### **Arbitration**

**22.** (1) If the parties to a dispute in terms of this Act refer the dispute to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), they may appoint as arbitrator a person from the panel of arbitrators established in terms of section 31(1) of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996).

(2) A person appointed in terms of subsection (1) who is not in the full-time service of the State may, from moneys appropriated by Parliament for that purpose, be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance for services performed by him or her.

(3) If the parties appoint as arbitrator a person who is not on the panel of arbitrators referred to in subsection (1), the Director-General may approve the payment to such arbitrator of the remuneration and allowances referred to in subsection (2), on the conditions that the Director-General may determine.

#### **Offences**

**23.** (1) No person shall evict an occupier except on the authority of an order of a competent court.

(2) No person shall wilfully obstruct or interfere with an official in the employ of the State or a mediator in the performance of his or her duties under this Act.

(3) Any person who contravenes a provision of subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

(4) Any person whose rights or interests have been prejudiced by a contravention of subsection (1) shall have the right to institute a private prosecution of the alleged offender.

(5) The provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply to a private prosecution in terms of this Act: Provided that if—

(a) the person prosecuting privately does so through a person entitled to practise as an advocate or an attorney in the Republic;

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(b) the person prosecuting privately has given written notice to the public prosecutor with jurisdiction that he or she intends to do so; and

(c) the public prosecutor has not, within 14 days of receipt of such notice, stated in writing that he or she intends to prosecute the alleged offence, then—

(i) the person prosecuting privately shall not be required to produce a certificate issued by the Attorney-General stating that he or she has refused to prosecute the accused;

(ii) the person prosecuting privately shall not be required to provide security for such action;

(iii) the accused shall be entitled to an order for costs against the person prosecuting privately, if—

(aa) the charge against the accused is dismissed or the accused is acquitted or a decision in favour of the accused is given on appeal; and

(bb) the court finds that such prosecution was unfounded or vexatious; and

(iv) the Attorney-General shall be barred from prosecuting except with the leave of the court concerned.

## **CHAPTER VI**

### **Miscellaneous provisions**

#### **Subsequent owners**

**24.** (1) The rights of an occupier shall, subject to the provisions of this Act, be binding on a successor in title of an owner or person in charge of the land concerned.

(2) Consent contemplated in this Act given by the owner or person in charge of the land concerned shall be binding on his or her successor in title as if he or she or it had given it.

#### **Legal status of agreements**

**25.** (1) The waiver by an occupier of his or her rights in terms of this Act shall be void, unless it is permitted by this Act or incorporated in an order of a court.

(2) A court shall have regard to, but not be bound by, any agreement in so far as that agreement seeks to limit any of the rights of an occupier in terms of this Act.

(3) Notwithstanding the provisions of subsections (1) and (2), if an occupier vacates the land concerned freely and willingly, while being aware of his or her rights in terms of this Act, he or she shall not be entitled to institute proceedings for restoration in terms of section 14.

#### **Expropriation Act**

**26.** (1) Without derogating from the powers that a Minister may exercise under the Expropriation Act, 1975 (Act No. 63 of 1975), the Minister may for the purposes of any development in terms of this Act, exercise equivalent powers to the powers that such other Minister may exercise under the Expropriation Act, 1975.

(2) Notwithstanding the provisions of the Expropriation Act, 1975, the owner of the land in question shall be given a hearing before any land is expropriated for a development in terms of this Act.

(3) In the event of expropriation, compensation shall be paid as prescribed by the Constitution, with due regard to the provisions of section 12(3), (4) and (5) of the Expropriation Act, 1975.

(4) Any right in land which derives from the provisions of this Act will be capable of expropriation in accordance with the provisions of any applicable legislation.

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#### **Trespass Act, 1959**

**27.** Nothing in this Act shall affect the rights of an owner or person in charge in terms of the Trespass Act, 1959 (Act No. 6 of 1959).

#### **Regulations and guidelines**

**28.** (1) The Minister may make regulations regarding—

(a) general conditions for the granting of subsidies in terms of section 4;

(b) the form and manner of service of notices in terms of this Act;

(c) any other matter required or permitted to be prescribed in terms of this Act;

(d) criteria for the recognition of persons, bodies or institutions in terms of sections 2(3) and 4(4); and

(e) generally, all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) The Minister may make different regulations for different areas in accordance with the circumstances in those areas.

(3) The Minister may by notice in the *Gazette*—

(a) issue guidelines in respect of the procedures to be followed in terms of this Act

and to provide assistance to parties who may become involved in a dispute related to matters that fall within this Act; and

(b) amend or withdraw any guideline contemplated in paragraph (a).

#### **Amendment of laws**

**29.** (1) The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column thereof.

(2) The provisions of the Prevention of Illegal Squatting Act, 1951 (Act No. 52 of 1951) shall not apply to an occupier in respect of land which he or she is entitled to occupy or use in terms of this Act.

#### **Short title**

**30.** This Act shall be called the Extension of Security of Tenure Act, 1997.

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#### **SCHEDULE**

##### **Laws amended**

##### **(Section 29)**

##### **No. and year of law Short title Extension of amendment**

Act No. 6 of 1959 Trespass Act, 1959 1. Amendment of section 1 by the insertion after subsection (1) of the following subsection:

“(1A) A person who is entitled to be on land in terms of the Extension of Security of Tenure Act, 1997, shall be deemed to have lawful reason to enter and be upon such land.”.

2. Amendment of section 2 by the insertion of the following subsection:

“(2) A court which convicts any person under subsection (1) may make an order for the summary ejection of such person from the land concerned: Provided that an occupier who has a right of residence or right to use land in terms of the Extension of Security of Tenure Act, 1997, shall not be ejected in terms of this subsection from land in respect of which he or she has such a right.”.

3. Insertion of section 3A: “**Application of Act 3A.** This Act shall apply throughout the Republic.”

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